to eliminate inequities in existing marketing practices, to insure an adequate regular supply of good, healthful milk to consumers, and for other purposes; to the Committee on Agriculture.

By Mr. STEIGER of Wisconsin:

H.R. 10771. A bill to provide for equitable military compensation; to the Committee on Armed Services.

By Mr. BURKE of Florida:

H.J. Res. 878. Joint resolution to redesignate the area in the State of Florida known as Cape Kennedy as Cape Canaveral; to the Committee on Science and Astronautics.

By Mr. RARICK:

H.J. Res. 879. Joint resolution authorizing the President to proclaim the first day of January of each year as "Appreciate America Day"; to the Committee on the Judiciary.

H.J. Res. 880. Joint resolution proposing an amendment to the Constitution of the United States redefining the advice and consent of the Senate, for purposes of the President's treatymaking power, so that two-thirds of the full Senate and House of Representatives must concur; to the Committee on the Judiciary.

By Mr. BURKE of Florida:

H. Con. Res. 404. Concurrent resolution expressing the sense of Congress that the United States should sell Israel aircraft necessary of Israel's defense; to the Committee on Foreign Affairs.

H. Res. 603. Resolution to express the sense of the House with respect to peace in the Middle East; to the Committee on Foreign Affairs.

H. Res. 604. Resolution to amend the Rules of the House of Representatives to create a standing committee to be known as the Committee on the Environment; to the Committee on Rules.

By Mr. CHARLES H. WILSON:

H. Res. 605. Resolution establishing the Select Committee on Privacy, Human Values, and Democratic Institutions; to the Committee on Rules.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

270. By the SPEAKER: Memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to establishment and preservation of the Thaddeus Kosciuzko Home National Historic Site in Philadelphia; to the Committee on Interior and Insular Affairs.

271. Also, memorial of the Legislature of the Territory of Guam, relative to a constitutional amendment to permit the people of Guam to vote in presidential elections; to the Committee on the Judiciary.

272. Also, memorial of the House of Representatives of the Commonwealth of Massachusetts, relative to reimbursing States for the cost of relief afforded certain migrant recipients; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. FLOOD:

H.R. 10772. A bill for the relief of Patricia Anee Rowe; to the Committee on the Judiciary.

By Mr. PETTIS:

H.R. 10773. A bill for the relief of Alfred Coleman; to the Committee on Interior and Insular Affairs.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

133. By the SPEAKER: Petition of the Executive Board, Third Marine Division Association, relative to designation of the first week in May of each year as "One Nation Under God Week"; to the Committee on the Judiciary.

134. Also, petition of Louis Teplitsky, Bronx, N.Y., relative to redress of grievances; to the Committee on the Judiciary.

SENATE—*Monday, September 20, 1971*

The Senate met at 12 o'clock noon and was called to order by the President pro tempore (Mr. ELLENDER).

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Eternal Father, as we undertake the tasks of a new week we thank Thee for the renewed energy gained by rest and the spiritual renewal received from Sabbath worship. Help us through each moment of this day, that we waste none of its hours, soil none of its moments, neglect none of its opportunities, fail in none of its duties. May nothing take away our joy, nothing ruffle our peace, nothing make us bitter, resentful, cynical or sinful. As we address ourselves to the complex problems of this troubled age, may all who serve in the Government be given a wisdom beyond themselves. Bring us to the evening time undefeated by any temptation, at peace with ourselves, at peace with our fellow men, and at peace with Thee.

In Thy holy name, we pray. Amen.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, September 17, 1971, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the legislative calendar, under rule VIII, be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The PRESIDENT pro tempore. Without objection, it is so ordered.

TODAY'S U.S. ARMY

Mr. MANSFIELD. Mr. President, last Monday, I had printed in the RECORD the first three in a series of articles, carried in the Washington Post, covering today's military, written by Haynes Johnson, George C. Wilson, Peter Jay, and Peter Osnos. Today I would like to bring this up to date and ask unanimous consent that the remaining articles in this series be printed in full in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MANSFIELD. Mr. President, the nine-part series portrays exceptionally well, I believe, the anguish and diminishing lack of pride experienced within the Army today. The tragedy of Vietnam has played no small role for the degradation of spirit which is observed. It will continue unless and until responsible people and institutions insist on a definite end. Only then will the tragedy of Vietnam and the effect of its spirit be removed. This must and will be done, in the interest not only of the Army but also of the whole Defense Establishment.

Mr. President, I am delighted that, insofar as the Army is concerned, Mr. Kenneth BeLieu, now Under Secretary of the Army, will play a significant and important part in the rehabilitation process which is bound to get underway and which will be in the best interests and security of this Nation.

May I say, in an attempt to bring about this rehabilitation, that the Senate, I am sure unanimously—and Congress as a whole—is prepared to do its part to bring about a restoration of pride, dignity, and a spirit of service in the cause of our country. It will be a most difficult job, it will take great dedication but it must be done, it will be done, and it will succeed.

EXHIBIT 1

WAR CASUALTIES: LEADERSHIP, MORALE

(By Peter A. Jay and Peter Osnos)

SAIGON.—The general is tall, outgoing and immaculate, his green fatigues pressed and starched to paradeground crispness. He has been a U.S. Army officer for more than 30 years, and now from the vantage point of Vietnam he believes that the Army may be caught in an impossible situation.

For a military organization to function properly, the general said, "you've got to have one of two things, iron discipline or perfect leadership. You've just got to have one of the two, and at the moment we don't have either."

Because it is next to impossible simply to impose discipline on young troops conscripted from a permissive and democratic society, he said, "we're going to have to develop it through other means, and the only other means is better leadership.

"To get that kind of leaders you've got to have the government behind you, and the people thinking it's a great job and an honor

to be an officer." And that, he said, is what the Army is lacking in 1971.

The general talked openly and earnestly: about the Army and the disruptive change of life it seems to be undergoing at this late stage of the Vietnam war, about the plague of drugs, about the growing rift between draftees and career men, about the difficulty of maintaining order and motivation among bored garrison troops far from home with nothing to do.

But he did not want his name to appear in a newspaper. Not because he spoke his mind, but because he felt would be too embarrassing for his two children attending college in the United States, if it became widely known that their father was an officer in Vietnam. They tell their friends, he said dryly, that their father is an international businessman.

Duty, honor, country. Where are the old values—the things old soldiers counted on, the traditions that held the Army together? Not here.

As the Army leaves Vietnam, its behavior has changed and so has its appearance.

With their longish hair, black-power wristbands and peace medallions, the rumpled, love-beaded draftees now lining up at the Longbinh urinals for predeparture heroin detection tests bear little resemblance to the tough professionals who led the way into Vietnam six years ago.

The 18- or 19-year-old Vietnam "grunt" has developed a manner all his own, a distinctly non-military style that includes a floppy "Boonie" hat, a slouching and slow-moving walk, hair parted crookedly in the middle and perhaps a sparse mustache.

Today's grunt was barely a teenager when American combat troops began to pour into Vietnam. He has seen antiwar sentiment grow into a unifying force for his generation and he wants to be a part of that—not a dispirited remnant of America's Southeast Asia fighting machine.

The mission has changed, too.

In the Mekong Delta recently, senior commanders mounted a major drive involving every one of the 18,000 men in the region. The plans were drafted in secret and sprung at dawn on June 22, starting with a general inspection. The objective was not to wipe out the Vietcong; that job has been largely turned over to the Vietnamese. The mission, as hard as any the Army has faced in Vietnam, was to curb the spread of heroin.

In the officers' clubs and generals' messes, much of the talk these days is devoted to questions in which the word "Vietnam" is used as a collective noun, representing all the ills from heroin to rebelliousness in the ranks to hostility in the United States toward all things military. How badly has Vietnam hurt the Army? If the chips were down, could my unit still fight? What will the Army be like after Vietnam?

The answers vary. But among field grade officers—majors and colonels—some of the brightest and most dedicated are also the most disheartened.

They are career men who joined the Army 10 or 15 years ago and have been in Vietnam before. Many wonder now whether the war was worth it.

"I'm leaving in three weeks," said one colonel on a plane flying to Pleiku recently, "and for sure I'm not coming back. The best thing for all of us is to go home. There is nothing more we can do here."

As he stepped off the plane and looked around at the once-bustling Pleiku airfield, now all but abandoned by the Americans and run by the Vietnamese, he shook his head. "It sure isn't what it used to be," he said. "The Vietnamese are letting it fall apart already."

A few officers react as did Col. David Hackworth, believed to be the most decorated man on active duty, who resigned recently with a few well-publicized and pointed blasts at the Army and the way it has fought in Vietnam.

"We had all the assets to win this war," Hackworth said in one interview. "We had half a million troops, unlimited amounts of money and the backing of the administration. No doubt we could have won if we'd had commanders who knew how to use these assets instead of these amateurs, these ticket punchers, who run in for six months, a year and don't even know what the hell it's all about . . ."

Although they might agree with Hackworth, it's not common for majors and colonels to speak out. Many officers disapprove of what he did, feeling that if he really cared about the Army after 25 years of service, he would have stayed in and helped pull it back together.

One officer who is staying in is a 30-year-old major who midway through his second tour in Vietnam held off a squad of Vietcong for almost 30 minutes with a pistol despite being badly wounded. He is a man with a bright future in the Army. But he recently confided that if he were starting out today, he probably would choose another career.

Another young major whose future was once bright now intends to resign. He doesn't want to be quoted, either, but what drove him out was what he sees as the Army's hypocrisy in dealing with Vietnamese who are known to be corrupt and inefficient but who are protected nonetheless.

Older officers tend to be less apocalyptic than their juniors. Many of them remember riots among occupation forces in Europe and the Pacific just after World War II and they wonder whether the troubles of today are really worse or just better publicized.

Among generals here, even those who believe the Army is facing one of its most difficult hours, there is a tendency to take the view that given a little luck and a little support from home, today's crisis can be ridden out.

"I don't see things as bad as most people," said one senior commander. "Talking about the nation now and not the Army—I'm an old hard hat and I don't agree with all this permissiveness. But as far as the Army goes, I don't think it's any worse. Christ, we've been through five years of war and nobody's supporting us. I think the Army's doing pretty well."

Gen. John H. Cushman, the ranking American in the Mekong Delta, takes a similar viewpoint: "You've got to be worried. If you're not, you don't understand the situation . . . But while the state of the Army may be bad, it's not disastrous."

Many officers express the view that the best thing for the Army to do would be to get out of Vietnam as fast as possible. They believe that a continued presence provides little help for the Vietnamese but exacerbates the problems of drugs and disaffection. "Why not just cut our losses?" one colonel suggested bluntly.

Cushman disagrees. He supports the Nixon's administration's withdrawal policy, and he has been steadily withdrawing the American forces—mostly support troops—in the Mekong Delta. "But the people who say the only way to solve the problem is to bring the boys home (immediately) are just wrong," he said.

"It would be disastrous for the Army's self-respect," said Cushman, "if people said we had to get out to save ourselves."

Cushman, a popular commander who takes pride in his efforts to stay in touch with the complaints of his men, thinks that the Army is "a pretty durable institution" that has survived difficult periods before and will again.

"There's an old saying," Cushman observed in an interview at his quarters in Cantho, "that the Army's not what it used to be and never was."

YOUNG PEOPLE KNOW THIS WAR IS WRONG

Interviews with scores of military commanders in the United States and abroad showed widespread agreement that the cost of the Vietnam war has gone far beyond the battlefield itself. These views are representative.

Gen. William C. Westmoreland, Army chief of staff:

As you know, the Army has carried the major burden of the war in Vietnam. We've taken two-thirds of the casualties; we've provided the major share of the logistics support on the battlefield halfway around the world, and we've had to cope with adapting our tactics and our organization to a new environment involving difficult terrain and difficult climatic conditions, at least for Americans, and against an unorthodox enemy.

We have done this without benefit of any substantial call-up of reserves, except a token number called up for a very short period of time. The burden therefore has been carried by the regulars—our officers and non-commissioned officers—plus the young men that have come into our ranks through the volunteer or Selective Service routes.

Vietnam, needless to say, has been our primary concern, and we've had to give priority resources to the accomplishment of our mission there. Accordingly, we have had to starve other areas.

We haven't been able to modernize our material to the extent that we'd like. We haven't been able to keep up our physical facilities. We have a very large backlog of deferred maintenance. We haven't been able to build new barracks and additional family quarters, all of which we need.

In order to support the one-year tour in Southeast Asia, plus the 13-month tour in Korea—and the short tour has been and is important in those areas and is almost a necessity on the battlefield—major problems have been created for the Army as an institution. The turnover of personnel that has evolved from the one-year tour has been our greatest liability. It has brought about a situation of personnel instability. Our company commanders, first sergeants and squad leaders are rotating their assignments to the extent that they were never able to get a grip on their organizations . . .

It's awfully difficult to maintain desired standards of discipline and esprit de corps when your units are turning over that rapidly.

We've had to absorb any number of veterans of Vietnam into our organizations in the United States and in Europe. They have an attitude—"well, we've been to war. This is garrison duty; this is not for us." Now depending on the unit, they have brought these Vietnam veterans in line in varying degrees.

But six years of war—and this has been the longest war in our history other than our War of Independence—has truly stretched the Army almost to its elastic limit. It has been a very traumatic experience for us. We had to lower our standards to provide the officers and noncommissioned officers to man this Army because the reserves were not called up. We didn't have the infusion of officers from civilian life that we've had in past wars. So therefore we had to lower our standards to meet the requirements in numbers.

Flag officer:

The young people know this war is wrong. They know we've killed more people than the North Vietnamese ever would have. We have to wait 10 years now before we can regain the trust of the young . . .

Former Vietnam division commander:

No, I can't justify it now that I see what the war has done to our country. It went on much too long. We already lost more than we can ever gain, no matter what happens . . .

Gen. Michael S. Davison, commander, American troops in Europe:

There are some highly visible scars [from Vietnam]. The Mylai thing and the courts-martial and things of that nature have certainly done serious damage to the reputation of the Army and to the prestige of the Army. But these certainly are not permanent scars.

I don't know whether there has been serious psychological harm done to the Army as an institution as a result of being through that experience or not. I used to get pretty depressed myself, from time to time about it. I haven't answered your question very well at all—no slashing, articulate, pungent statements.

But when you look at the attitudes reflected in the country today it is really hard to say that [the price of Vietnam] has been worth it. So many things went wrong right at the beginning. For example, I was in the Department of the Army staff in 1965 when we were first getting into the business of deploying troops over there . . . We planned to meet that required increase in the size of the Army by calling the Guard and Reserve . . . Twice our chief of staff marched up the line to Mr. McNamara recommending that we call the Guard and Reserve . . .

Well, the answer was to expand from 860,000 people to a million and a half by taking in people off the street, privates and 2d lieutenants. That is a very tough way to get from point A to point B. You can even make a case for not even being able to get to B that way. So we started off under very, very difficult conditions. And I know a lot of us had real reluctance about getting into the war. The wrong war, at the wrong place at the wrong time. And if you look at many of the things that came out of the Pentagon papers and so on, it was a very tough proposition.

Nevertheless, I think that on balance the Army has accomplished what it was sent out there to do. It was sent out there to create those conditions within which the political, economic and social future of the country could be established. And we have certainly created those conditions. We left the situation within which, if the Vietnamese have got the will to stay the course, and if they are willing to do what has to be done on certain issues such as corruption, certain social things that have to be done, they can make a go of it.

So you can make a case for saying that the Army accomplished its mission, but now the price—the price has been a terrible one. Terrible one. In terms of the casualties, in terms of national treasure of both men and dollars that have been spent, the price the rest of the Army had to pay. The 7th Army here in Europe is still suffering today as a result of Vietnam because we had to wreck The 7th Army in order to keep Vietnam going because the administration didn't see fit to provide enough men and things we needed to do that job and still preserve ourselves. So the Army has paid an enormous price and the country has paid a tremendous price . . .

Maj. Gen. Howard H. Cooksey, commander, Ft. Dix:

I think it (waging the Vietnam war) was something that we really had to do, to live up to our commitments in Southeast Asia. And if we had backed off from this we'd be in a heck of a worse shape than we are now. At least we have some credibility there . . . [But] it has given the Army a very tough blow . . . The longer the war goes on, the more unpopular it becomes . . . I don't think we would go at it again in quite this way. If we got the mission to go certainly we would go. But we would say let's use the entire Army and the other agencies that back up the active Army—let's bring it all to bear and fight the war and end it and come home. Or not do it at all. I can't see us ever getting into another situation like this. I just can't see it.

Maj. Gen. O. C. Talbott, commander, Ft. Benning:

Certainly in the tactical sense, in the experience sense, we've got more field experience, tactical experience, command experience in the U.S. Army than we have had since the Civil War—more than any other country in the world has. In that sense, there has been a fantastic plus.

From the doctrine standpoint, it has sort of shaken up the thinking and made people take new approaches. In those senses it has been good.

In the sense of the impact that we are a reflection of our society and the antiwar feelings on it, of course that's on the negative side.

In the long run, our Army cannot exist without the good will of the people. Draft or not draft, volunteer or not volunteer, it just cannot exist, because it is the people themselves who are coming to it. They will come to it bitterly and with distaste, or with pride and willingness to perform—based upon the national attitude of the people as a whole. And that has to be wrapped in. It is not a simple military question.

THE LACK OF A DEFINED GOAL . . . BOTHERED ME MOST

Alfred B. Fitt, now special assistant to the president and director of federal relations of Yale University, served as general counsel to the Army and later as assistant Secretary of Defense in charge of manpower throughout the Kennedy-Johnson years. As manpower chief, he was a leading Pentagon policymaker during the Vietnam buildup and played a vital part in conscripting men for the war. Here, in this recorded interview, he reflects on what Vietnam has done to America, to the armed services and to the Army.

I think Vietnam's been an unmitigated disaster for the country, for the armed forces and for the Army. I've often pondered since I left the Pentagon, and even before I left the Pentagon, how we managed to make such a mess out of things.

I don't see how anybody with the benefit of hindsight supposes that we would do it over again if we knew how it was going to turn out. It has divided the country in ugly ways, it has caused serious and harmful changes in the Army itself.

I wish I could find some consolation, some suggestion that all these people who have died have died in a cause that was worth it, but I don't find such consolation. I haven't tried to articulate for myself the ways in which the disaster manifests itself, but I see a country that's terribly distracted, and people are angry, and it's very hard to approach problems dispassionately in the context of the war.

The war has really destroyed for a great many people the conviction that the government is something which is respectable and entitled to credence in its efforts. They don't believe the President, they don't believe this President, they didn't believe Johnson—perhaps with good reason—but I think it all goes to the question of how the war has been handled. They see nothing but death and destruction and maiming and incidents like the Mylai massacre and all these other horrible things that have come out and that people don't want to hear about—and veterans organizations and others who are making Calley a national hero. This kind of distortion of values. Well, I'm very unhappy with the whole thing.

Now, I don't claim to have had any special clairvoyance or any highly moral and correct anticipation of the disaster that lay ahead. I remember—oh, it had to be before 1965—talking with a very decent and wonderful colonel. We were losing two or three men a week then. As we were talking about that, I remember thinking and articulating a belief that our goals really weren't defined very well, and that I didn't know where all this was leading, and that maybe the bloody trickle that we were then suffering would turn into a hemorrhage and that the American people wouldn't stand for it.

I've often thought back about how little discussion there was among the senior people in the Pentagon about the war. And I still am unable to account for the relative silence which prevailed until suddenly in January or February of 1968 it got to be so God-awful, and I discovered others who felt the same way I did—[Paul] Warnke and [Townsend] Hoopes and then [Clark] Clifford and [Paul] Nitze—but it's hard for me to identify just when I realized that it was as awful as it was.

I think it was the lack of a defined goal that could command my support that bothered me most. So far as I know there was never even a military plan so that you'd sit down in the last week of the year and describe what the hell it is you expect to accomplish in the next 12 months, and how is that going to make a difference in the situation. Maybe that was happening, maybe the Joint Chiefs were talking to [then Secretary of Defense Robert S.] McNamara about that, but people in my role just didn't participate in that kind of discussion. The whole thing seemed like some kind of a bloody slugging match that was aimless.

And I didn't believe that our national security was really involved in the management of the real estate over there in Indochina.

I think at that point I sort of compartmentalized in my attitudes. Like most of my friends, my evenings, when I did get home, were spent listening to my wife and children screaming about how awful the war was. My days were spent working on projects that I thought were worthy, and I didn't have any sense of being a war criminal or contributing to the looming disaster.

I was trying to get a reform on the selective service policy and fascinated with the problems of dealing with then [Draft Director Lewis B.] Hershey and a hostile Armed Services Committee, and I was fascinated by the problem of reforming military compensation. One of my pet projects has to do with the dependents' school system, which was terribly underfunded, and we were really shortchanging the kids overseas. So I felt good about making the case for increasing the dependents' school budget from, I don't know, $10 million a year to $120 million, and persuading McNamara that that's something we ought to do in justice to all concerned. So I had all these kind of personal satisfactions out of what I was doing.

And I admired the President. I didn't like him—not very many people like him—but I thought he's doing a hell of a good job except for the war, and I didn't want to create any problems for him or McNamara. I wanted to make things work in ways that would ease their tasks rather than increase their tasks.

As far as what Vietnam has done to the Army, I think—and this is a cliche—the Army reflects the society from which it's drawn. With violent divisions on the outside, you're bound to have changes on the inside.

The Army as an institution has an extraordinary ability to take young men and make them selfless in sort of a peer group situation and get them to do things that nobody would do in his right mind—you know, go out and get shot at. But that ability depends on a sustained belief in the value of what they're doing, and that sustained belief doesn't exist now, although obviously not everybody has that attitude. But enough do so that there's a critical mass of sullen, dispirited, contemptuous guys.

The leadership problem for the young second lieutenants and first lieutenants and captains must be perfectly awful. It's just

changed—the whole manner in which small unit leadership is exercised.

The young officers don't believe in the war either, a lot of them, and you've got a lot of conduct which is the antithesis of the Army as we knew it. You can't get people to do things. You wink at all kinds of slovenly conduct and all sorts of things that represent individual self-assertion, which is intolerable in an effective fighting force. You've got to treat the people decently and justly, but you try to increase the groupiness—that's the only way it can work. So when there's a breakdown that permits the men to think of themselves as individuals and not as part of the group and protectors of the group, you just don't have a fighting force. You have a rabble.

I guess we started on the question of what this has done to the Army, and we've talked about what it's done on the level of the common man, of the young people coming into the Army as the mustered men. But I'm sure it's put a great many career officers in a defensive situation, whether they acknowledge it or not.

You can't be fond of being spat on, either literally or figuratively, just because of the uniform you're wearing. Why take all that grief when you can go out and use your experience in other ways? And why stick with an Army that seems to be folding up in terms of traditional values? Maybe it's good to change many of the practices of the Army and eliminate the chicken stuff, and all that. But to stay with an Army where there have had to be so many changes, in the way of abandoning practices that the Army thought to be vitally important to a successful fighting force—well, many quit in disgust.

You can see it in the attitude of the Marine Corps; they just can't bear the thought of turning into an outfit with hair down to the collar and slackness on saluting and that kind of thing. I'm sure that many Army officers feel the same way.

I do think the situation is recoverable if you can extricate yourself from a war that people don't believe in, or even if they believe in it they're weary of it and not willing to pay any more of the blood costs involved.

The Army can recover all right. It will take a while, but you know they've been running some kind of Army since 1775 and most of the ways in which you treat men have already been discovered. I'm sure we haven't lost it forever.

The Army is not a static institution, there's this great tide of people flowing through it and life goes on, and society adapts to change. Maybe what it was like 10 years ago will never recur. But I would just reject as nonsense the idea that there is this permanent sapping of the national will to fight in glorious causes. There's a clear sapping of the will to fight in an inglorious cause—but, God, what society wouldn't react that way?

BORED GI'S TURN TO "FRAGGING," HEROIN

(By Peter Jay and Peter Osnos)

DANANG, VIETNAM.—He is a black private from Moline, Ill. His name is General D. McLemore. He was lying nervously awake in the barracks to which he had just been assigned when, through the thin walls, he heard the unmistakable sound of the pin being pulled from a grenade.

McLemore was not a jumpy type. At 20, he was on his second tour in Vietnam, this time with the Americal division at Chulai. His first tour, as a radioman on an infantry reconnaissance team in the Central Highlands, had come to an early end when he was wounded in combat and evacuated to the United States, but he had volunteered to return.

The reason McLemore was on edge had nothing to do with the enemy. He was nervous because earlier on this particular evening, Sept. 25, 1970, there had been a fight between whites and blacks at an enlisted mens club and tempers were running high.

McLemore had not been in the club, nor in the fight. But he was a new man in a company that was almost entirely white, and he had been hearing whites talking loudly, outside in the night, about "getting a nigger."

Under oath some time later, he was to say that walking to his "hooch"—barrack—that night felt a little like combat. "It was like when you are out on a patrol. You are always wary and scared, you always look for danger."

So when he heard a white voice outside the hooch say "The nigger lives here, let's get him," and moments later the tinny noise of the pin coming loose from the grenade, he reacted with the instinct of a combat infantryman.

"I knew it was a frag, sir," he said later, "I thought he was going to throw it through the screen." He picked up his M–16 chambered a round, and quickly went outside in his sandals and undershorts.

There, under the window by McLemore's bunk, a white man was bending over. There are different accounts of what followed, but this much is clear:

The man bending over by the window, a grenade in his hand, was Spec. 4 Bruce Thomas, a white soldier who with three others had just been talking loudly about "getting a nigger."

At McLemore's command, Thomas stood up and approached. He kept walking until he was face to face with the black soldier, and the M–16 suddenly discharged. Thomas fell dead, McLemore dropped his rifle in horror, and the grenade—a signal grenade, not a dangerous fragmentation grenade after all—went off in a cloud of red smoke.

McLemore was subsequently court martialed, convicted of voluntary manslaughter and sentenced to 18 months imprisonment. He is now in the stockade at Leavenworth, Kan.—though the case is under review.

The sentence was a relatively light one for the offense. Henry Aronson, the civilian lawyer who assisted with McLemore's defense, believes the military judge was troubled by the case. Certainly Aronson was troubled.

"We're talking about a man who was put in extreme danger in a community where everyone lived armed, and where the racial tensions were as high as can be," he said in his closing statement.

Blacks, of course, are not the only targets of fragging—or of intimidating pseudo-fraggings with duds or smoke grenades, as in the McLemore incident. Indeed, fraggings or other violent actions are more often directed against those in authority—white or black.

Last January, for example, at Quangri combat base just south of the demilitarized zone, two white majors went out late one night to ask some black soldiers to turn their tape recorder down. There was an argument, a scuffle, and both of the officers were shot, one fatally.

The murder weapon was never found, but one of the soldiers, Spec. 4 Alfred B. W. Flint Jr., was convicted of premeditated murder and sentenced to 30 years. There is no indication in the transcript of the court martial, held here last spring, that the incident was basically racial in origin.

Although "fraggings" have received a good deal of attention, their true extent is unknown.

Aronson, who besides representing GIs is a member of the civilian Lawyers' Military Defense Committee, observed in a recent letter to his Boston office: "Fraggings are more threat in anticipation than in execution." He added, however, that many units in the field "take guns away from men except those on patrol or guard. Grenades are taken from everyone."

Pentagon figures show that incidents of fragging—defined as assaulting a person with an explosive—are climbing as the war itself winds down. In just the first seven months of 1971, there have been 210 assaults considered positively or probably "fraggings." This indicates the total for the year will be way above the 271 assaults registered last year, although fatalities from fraggings are now running at a lower rate.

The explanations for this phenomenon vary. Racial tensions, drug abuse and plain frustration of men being hassled by sergeants at a time when this war seems useless—all are cited by commanders as possible causes.

Although disturbing, interviews with commanders who are trying to hold the remnants of the American Army here together showed that fragging was not as worrisome as that phantom enemy—drugs.

Despite repeated warnings by the Army about its possible hazards, marijuana smoking was never really more than a nuisance and an embarrassment to the commanders. Marijuana was cheap, plentiful and pleasurable. But then late last fall, a new phenomenon began to appear A grainy white powder that came in neat little plastic vials which the Vietnamese peddlers learned to call "smack," "skag" or "coke." There is no word in Vietnamese for heroin but that is what it was, and before long tens of thousands of GIs were using it.

The Army then found it had made a mistake in exaggerating the dangers of marijuana, because when similar, more urgent warnings began to appear about heroin, most soldiers just didn't believe them. Also, the mistaken belief spread that heroin is nonaddictive when smoked rather than injected. Heroin in Vietnam is about 15 times as strong as the drug sold in the states, so there wasn't any need to inject it.

Another attraction was that heroin mixed with tobacco has a barely detectible smell, while marijuana has a thick, sweet odor.

"I stood there and puffed skag right while the sarge was checking me over," said one GI recently at a drug clinic in Cantho.

The Army, increasingly concerned about what was clearly becoming an epidemic, thrashed around for a solution. Some GIs were thrown in jail, others were dropped from the service as unfit, still others were admitted to amnesty programs to be "withdrawn" from heroin under medical supervision and then returned to their outfits.

Efforts were made to persuade South Vietnamese authorities that they had to take decisive steps against distributors. President Thieu was told on many occasions by ranking Americans that Congress would not look kindly on continued aid for a country that was turning thousands of its young people into junkies.

The South Vietnamese responded with some tightening of customs inspection and crackdowns on scattered drug dealers. One result has been that the supply of marijuana has dropped sharply. It is now harder to find and more expensive than heroin, which is still abundant.

Ironically, many officers in the drug field believe the army would be a lot better off if the heroin users could be converted back to pot. Lately even Army radio has been taking a notably mild line on marijuana.

The Army has now developed a reasonably comprehensive approach to the heroin problem. Amnesty for men who turn themselves in (some do it two or three times) is vastly preferred over courts-martial, and there is a determination that no man should leave Vietnam addicted.

Perhaps the most effective tactic of all has been the urine test. It took only a matter of days for the word to get around that departure from Vietnam would be delayed if you had drugs in your system.. Rather than try to cheat the test, many GIs decided to withdraw.

While this provides no assurance that the troops will stay off, it offers them a fresh start when they get home where heroin is less available and less pure than in Vietnam.

There are a variety of explanations offered for the heavy drug use in Vietnam. The one

most often heard is that the GIs are young and lonely, like soldiers in all wars. Also, this war is different, perhaps, because it has become so unpopular and there is so little left for Americans to do.

"They really are not doing anything they consider relevant with the possible exception of dying," said Maj. Richard Ratner, a psychiatrist who runs a drug program at the massive Longbinh support base near Saigon.

Aside from its possible link to drugs, boredom is widespread enough to be a problem in itself—although this army is better cared for, better air-conditioned and better entertained than any of its predecessors.

"The grunts do not have a job," wrote Aronson of the lawyers group, "and this explains to me why justice problems are so much greater than the other services . . . The Air Force and the Navy men have jobs for the most part . . .

"The Army does not. They just sit and smoke and count the days and worry and wonder about God knows what—and command wants them to 'Do something' which translates into ludicrous assignments and getting gear in shape. All this leads to an ongoing brinkmanship, with a grunt going as far as he can not to do what he is told to do."

It is an easily observable truth that when American soldiers are busy and under pressure, they perform better and far more cheerfully than when they're not.

At Khesanh in February, when the American forces geared up for what was clearly the last real push of the war and swept back into enemy-held country in preparation for the South Vietnamese invasion of Laos, the bored American troops underwent a remarkable transformation.

Reporters who traveled to Khesanh and other forward posts during the nearly two-month-long operation, watching the troops work feverishly as the weather turned from cold rains and mud to blistering sun and choking dust, found spirits considerable better than at any of the comfortable echelon camps.

Drugs were available—with marijuana more in evidence than heroin—but fights were few and MPs reported practically no petty thefts and other lesser disciplinary infractions.

"The only way to keep a fighting man in trim," Gen. Creighton Abrams, commander of U.S. forces in Vietnam, often tells friends, "is to give him something to do."

GI's Still Gripe—And Then Some

(By Haynes Johnson and George C. Wilson)

Fort Bragg, N.C.—It isn't "From Here to Eternity" and it certainly isn't a barracks-room ballad like "Gunga Din." But Willie and Joe, those grizzled and irreverent old soldiers from World War II, would feel right at home here in at least one respect: the griping.

The 1970s GIs of this vital garrison where a president must turn for combat ready troops in a crisis were indulging in that ancient Army pastime. As always when enlisted men gather off-duty, the longer they talked the louder the language and the more boastful the stories.

"The Army is so f——ed up," one of the young soldiers sitting around the table said. "The Army took me away from school. It took me away from a job. It put me in an environment that I don't like. I guess it's O.K. if you dig it, but I don't dig it."

Another GI spoke up immediately.

"The Army's going to be dead. They're going to run into more and more problems getting guys to re-up [re-enlist] because of the harassment and because of the cost of living. And here in the states a third of the division is in the field all the time doing bull s——, nothing more, and the rest of the division is back in their own area picking up cigarette butts. And they're sick of it. And when you don't pick up the butts you get harassed. And since the war's wound down when you don't pick up the butts you get in the last few months there's nothing to do except stand guard and things like that. The VOLAR [volunteer Army] program's a complete bust because nobody wants to go along with it.

"The Army isn't going to exist. There's going to be more and more men getting out. Not only that, the lifers [the career noncommissioned officers] are getting more and more dissatisfied because the lower ranks are getting better programs and better wages than they got. So they're getting out, too. Thank God, the military is destroying itself. Cancer eventually kills the victim."

One of his buddies, a GI with a drooping mustache, picked up the conversation. "Right now we have a guy in the unit facing a court-martial, dishonorable discharge. About a week ago, he went out and let all the air out of the tires of one of the lifer's cars. He had really been harassing us, that lifer, and we were thinking about planting a bomb in his room. And we started harassing him: kicking his door down, painting his whitewalls black. And then this guy let all the air out of his tires, and he got caught."

A Vietnam veteran showed he could top that with a story straight out of Catch-22.

"In Nam," he said, "we were going to have a parade for Gen. Malloy and we didn't think it was right for us to march.

"And so we broke in the demolition room and stole some C–4 and blew up the reviewing stand where he was going to give us a speech."

Loud laughter and cheers. "Oh, Wow, that's beautiful, man!" one soldier called out.

"You see, stateside we do it another way," a GI explained to his civilian visitor. "You try to get the guy's efficiency rating shot so that he gets transferred or else he puts himself in for Nam so he can get his efficiency rating back up. But it's damn frustrating. It's so hard to get back at them."

The soldiers went on to tell other stories: of "fragging" sergeants in Vietnam with hand-grenades . . . or destroying Army equipment here at Ft. Bragg . . . of boredom and resentment and disobeying orders . . . of questioning authority and arguing with their superiors about military and national policies.

They were exhibiting traits that commanders invariably cite when they discuss what today's young soldiers are like. Two factors distinguish today's Army from the old one of GI griping and questioning: the depth of the hostility expressed and the willingness of some soldiers to do more than merely complain about conditions.

A full colonel who commanded a brigade at Bragg was asked if the soldiers were telling the truth when they boasted about sabotaging their own equipment. "They do," he said.

"You mean it is a fact?" he was asked again.

"It is a fact."

The situation is paradoxical. Bragg is the home of the elite 82d Airborne Division and the Green Berets. To an outsider, Bragg seems a place of high discipline and motivation, espirit de corps and spit-and-polish. The chant of marching soldiers fills the air, the pace of maneuvers is brisk, the barracks neat and well-scrubbed. Mutual respect and courtesy appear to prevail. Officers and enlisted men exchange snappy salutes when they pass each other, the officer saying his good mornings, the enlisted man responding with a terse reply, "Airborne, sir."

But Bragg is also the home of strong soldier dissent. It is a place where officers sign their names to antiwar ads in the local newspaper saying they "demand the withdrawal of all American military personnel and advisers" from Vietnam by the end of 1971, and a garrison where privates voice even harsher antipathy toward the Army and the war. To hear some of these soldiers is to wonder if they will ever fight again.

Yet most paradoxical of all is the attitude of their own commanders. Although fully aware of the anti-military attitudes among many soldiers, these commanders regard today's soldier as the best in American history. In their view, these young men are the best educated, best trained, most sophisticated ever to wear the uniform. If that seems far beside the point when considering the Army's present difficulties, the commanders will cite what they see as the final test. These same young men fought superbly in the longest, most unpopular war in American history—a war the soldiers themselves came to reject.

Officers, at least some of them, even profess to find a virtue in the attitudes of today's soldier.

"The Army has to be questioned," said a major with 18 years' service, including three tours of Vietnam. "It's a bureaucracy. Like any bureaucracy, it tends to get moving in a certain direction and it takes a hell of a push to get it moving in another direction.

"These young, well-educated, questioning kids coming in today are really doing the Army a lot of good. You know, one of the things Von Steuben and Pulaski found when they came here to train American troops when the Army first started during our revolution was that American soldiers were always questioning the orders. Now all of a sudden everyone's walking around real surprised. American troops have always questioned the orders. The press has just started talking about it recently."

But saying that, few would deny that here, too, the Army faces acute problems common to other areas.

At night, soldiers gather in coffeehouses in downtown Fayetteville to voice their displeasure with the Army. They hear speakers advise them of their constitutional rights and outline protest demonstrations and the ways to disrupt the military. The walls of the coffee houses are decorated with all the slogans and posters so familiar at antiwar meetings in New York or Chicago or San Francisco.

As has been reported in a previous article, drug use is extensive here. Both enlisted men and officers say heroin—variously known as "smack," "H" or "horse"—is easier to get than marijuana. One officer explained that particular phenomenon this way:

"Heroin came in here, as I understand it, when a lot of guys came back from Nam and really had been turned on to grass. They thought, 'This is good. I like it. I like to relax with it. Then Operation Intercept came along and cut down the flow of marijuana into this area. Guys began to look for other ways to get their highs.

"And some bold and brazen individuals began to try hard narcotics, and lo and behold if they didn't get addicted the first time they tried it. Not only that, it was a fantastic high. All of a sudden they began to be connoisseurs. They say 'I like the downer you get on heroin better than the high you get on amphetamines.' And I think that's how heroin became entrenched in this area."

He went on to say:

"Now when you go to buy drugs, heroin is here. You walk down the street in Fayetteville and there's a little teany-bopper that says, 'smack, smack, smack.' He's got it. He'll sell it to you. I talked to a guy the other day who was looking for grass. He went to three dealers and couldn't find it. You don't sell grass because it's too bulky. It's too easy to get caught."

Although soldiers here use drugs in their barracks, the common practice is to "turn on" at rented apartments, or pads, off the base in the Fayettsville area. And here, as in Germany, crime and drugs go hand in hand. Barracks thefts are common. "Personally, I'm very paranoid," said one soldier. "Like

if I see anyone in my barracks I don't know, I get all uptight."

Exchanging stolen property for ready cash is no problem. The ubiquitous pawnshop dealers off base take what the soldier has to offer with no questions asked, commanders say.

But perhaps the sharpest impression of the garrison Army today is the rift between the young soldier and the veteran noncommissioned officer. They speak a different language, live a different style, view the Army and America from a different perspective.

"It's advanced Boy Scouts," said one old-time sergeant of the changes taking place in in the new Army. "You find the young trooper—well, he does things just to irritate a professional soldier. No hat, no shirt. I don't like to wear a hat either, but I do because it's part of the military. And pot smoking, I find it hard to believe there's a guy sitting right on top of a track [half-track armored vehicle], in broad daylight, 25 people around and he's smoking a big joint, and nobody says anything about it.

"I personally think the Army should take lessons from the Marine Corps. The Marine Corps says we're not joining you, you're joining us. But these young soldiers they question you. They say 'why?' They ask why you want to go to Vietnam, and you say, 'well, you go because you're a soldier.' And they say, 'you're nuts. You're out of your gourd. The Vietnamese never did anything for you.'"

The young soldier reacts no less strongly albeit differently.

"The lifers," one of them said, "everything that comes out, from the new regulation to the new hair styles, they hate it. Today I was discussing the war with my new NCO, and I'm violently opposed to the war and I wouldn't fight in it, but I didn't say it that way. I made what you might call a moral complaint about the war. You know, economically and humanistically how wrong it is. Any war that is.

"And he told me that since he was going to be my NCO that if I opened my mouth and talked about the war like that again he was going to make sure I shut up. And I said, 'well, I'm not going to make any speeches about it, because that's wrong, but I'm going to continue to talk to the guys I work with because that's normal.' And he says 'well, I'll shut you up, because I'll get you court-martialed.' He can't do it legally, I know he can't. But that's what he said."

Strangely, both groups respond the same way to another facet of Army life. They believe civilians view the man in uniform with contempt. A sergeant who served in Vietnam told of going back to his home town. "They asked me if I ever killed a child," he said bitterly.

A young soldier from Ohio, who is militantly antiwar, found his personal view made no difference when he was in uniform.

"It's weird when you go nome in uniform," he recalled. "People just look down on you. They treat you altogether different when you're in uniform. I went up to the campus to see my girl and I got called pig and murderer and all other kind of things just because I was in uniform."

Such emotions come as no surprise in this period of bitter divisions over the war in Vietnam. American soldiers of all ranks feel they have been misunderstood, unfairly stereotyped and discredited by their own fellow citizens. Here, though, as at other Army installations, you meet officers who see the present climate a challenge and testing being beneficial in the long run.

Perhaps a major in the Green Berets who had served four times in Vietnam over the last decade expressed that thought best.

"Here we were, before this Vietnam war, so damn self-satisfied and smug that it was unbelievable," he said. "We were sitting on top of the world, literally, and saying we know what's best about everything. Well, we really got our nose bloodied. Things just got torn up in the United States. People spoke out. They said just because he's elected to Congress he isn't God, just because he is a general in the Pentagon he isn't God.

"They asked questions. And if nothing else comes out of this war but that, we've won a magnificent victory. If we can get the people to question some of the ridiculous as well as the intelligent decisions of people in the Pentagon and the people in the government, it's been worth it ten times over."

And for all the doubt and dissent voiced inside today's Army, that candid professional soldier's viewpoint is not unusual, either.

COMMISSIONED DISSENTERS: "YOU'RE A TOOL, A MACHINE"

The following conversation was taped with a group of about 12 Army officers, from majors to lieutenants, who are members of the Concerned Officers Movement, at Ft. Bragg, N.C., that put an advertisement in a local newspaper calling for an end to the "immoral and wasteful war" in Vietnam. Here they discuss how they feel about the Army and what prompted them to join such a group:

CAPTAIN. "When you're inside the military you really don't know what your rights are, and I think this is one of the biggest problems. This threat of intimidation from not knowing exactly what can happen to you, exactly what the regulations are.

"What happened here was a very heavy personal move for me. Armed Forces Day was coming up and I thought it was time to express something about the war. I had come into the Army sort of accepting the Army as an institution. I had, of course, anti-Vietnam and antiwar feelings but it was only after sort of living within the military that I came to the point where I no longer could accept the military as a worthy institution. So we talked about taking out an ad, and checked into it and it seemed we were within our rights under the Constitution.

"Then after the ad ran we were first told we were all going to be court-martialed. Then they offered 14 of us a chance to resign, which we did not do."

LIEUTENANT. "I've been opposed to the war for several years, but it's been a developing trend since I've been in the service. Within myself I just no longer can sit back and let other people represent something I don't believe in."

LIEUTENANT. "It's the rigidity of the military. It's the idea that when you're in, you're a tool, a machine. You're to do what you're told with no questions asked. You know, don't embarrass anybody, save your own ass kind of thing."

LIEUTENANT. "I felt pretty hypocritical ever since I joined ROTC. I made a lot of mistakes going back a long way. So then I was just sitting down here at Ft. Bragg and my conscience kind of bothered me, and I just came over here one night [to the private house where they hold meetings] and fell into things. Now I've come to the point, because of Vietnam, that I wouldn't participate in a war unless I were sure that the United States was right."

LIEUTENANT. "If New York Harbor was invaded tomorrow—or today—I'd never touch a weapon. All I could do is not participate."

CAPTAIN. "When I was a sophomore in high school I read 'All Quiet on the Western Front,' and it made a lasting impression on me. This man was writing about how these young people were totally destroyed by war. It just exhausted them. So that showed the insanity of it. That waste of human life. For what?

"What wars are ever fought for 100 per cent pure reasons? I can't say what I would do if this country was invaded. I know when I thought I was going to go to Vietnam I decided I wouldn't go because all the reasons for being in Vietnam were completely immoral. That's the way I feel about it. When I see pictures of what we've done to other human beings, I just think that we, in the world, have to find a better way of relating to one another."

LIEUTENANT. "I'd say at least 75 per cent of the people I know, young soldiers, lieutenants and captains, have told me privately they agree with what I've said, but either they don't have the guts to say it publicly or they don't feel it was their place to speak up. I find very few people who will say we didn't do the right thing [by publicly protesting the war]."

CAPTAIN. "I think the basic trend in our society today is to be apolitical. Our generation, too. The older generation tells us, 'Well, sit back. Wait until you come of age.' The thing is: when do you become of age? I feel I've come of age now.

"I had a long talk with my commanding officer about a month ago and he said, 'Someday the burden of responsibility is going to be placed on your shoulders,' and as I left his office I thought to myself: the burden of responsibility is on my shoulders right now. If I'm ever going to do anything in my life now is the time, because I'm 27 years old. When do you start participating in society? I'm ready to participate right now.

"This is why I'm not going to accept the idea that I could become another William Calley.

"I'm not going to become institutionalized to the point where I can go out and kill somebody."

LIEUTENANT. "I think most of the younger officers in the Army feel like most of the people in this country. If you're in the Army for two years and you do something like signing an antiwar ad there goes your whole future. You're not going to be able to get a job; people are going to step on you; your aunt's not going to like you. The security thing. Of course, for officers who plan to stay in the Army—well, that kind of action is unthinkable. There goes their career."

LIEUTENANT. "Let's face it. The big problem is the Army's not set up to change and yet society's going through tremendously accelerated change. This to me is the source of the conflict you see in the Army today.

CAPTAIN. "The Army is caught in its own trap. It can't change fast enough, and yet it's trying to do something. They realize that something's wrong and they'll ask you what it is. But they won't listen when you tell them."

LIEUTENANT. "Yeah, you can't say, 'Thou Shalt Not Kill.'"

CAPTAIN. "They can't step outside the system far enough to really ask why things are done in the first place. Whereas the younger people are asking, 'How come this is even being done in the first place' They show you a little bit of change and they say, 'Look aren't we nice guys, we changed this.' And we say, 'Why in hell don't you change the whole thing?' But they can't look at it that way."

MAJOR. "The Army's reacting in this situation the same way other institutions in this country are reacting. Just like the colleges. Students are yelling that they want more of a voice, so the administration lets the girls stay out one hour extra on weekends.

"It's the same way with the Army. Everybody's screaming at the Army and the Army says, 'OK., you can grow your hair an inch longer.' That's ridiculous."

LIEUTENANT. "The Army's just another institution. It's just a mirror image of what society is."

MAJOR. "But this is a special situation today in that the Army brass is asking young people who are perhaps more politically aware than any other generation in our history to fight, to risk and give their lives, in a war that they know is politically and morally unjust. And not only are these people

reacting against the establishment image of the Army. They're also exerting their rights to refuse to be involved in something like that."

CAPTAIN. "While we've been talking here, it's dawned on me that the Army and society have forced me to become a citizen of the world. They've abdicated, in my opinion, from the President on down. They've pulled so many blunders that even I, way down here low on the totem pole, say I refuse to be responsible for your mistakes. So I'm having to try to educate myself to come out of my own little shell. They're forcing me to be a better citizen and a better person.

"Maybe I'm developing an ethic of suffering. In that way I can toss the blame back on them. If they had executed their responsibilities better I wouldn't have had to act this way."

RETRAINING THE LEADERS OF TODAY'S GI

(By George C. Wilson and Haynes Johnson)

FT. BENNING, GA.—The black lieutenant gave an order to his sergeant, a white man. As soon as the lieutenant was out of earshot, the sergeant told another white soldier in the unit: "I don't know about you, but I ain't going to work for that damn nigger."

The sequence ended and the white and black officers watching it on closed-circuit television at the Army Infantry School here, braced for the question coming next: What would you do?

The scene was just one of many from a special seven-hour course designed to help Army officers cope with the crisis on their hands compounded of race, crime, rebellion, anti-militarism.

That the course was developed here at Benning is both appropriate and ironic. Appropriate because Benning is the home of the U.S. Infantry, heart of the Army. Ironic because Benning was the site of both the training and the trial of the man whose actions impelled this retooling of Army leadership: Lt. William L. Calley Jr.

Maj. Gen. Orwin Clark Talbott, 30 years the soldier, signed the murder charges against Calley for killing Vietnamese civilians and is now heading Benning's drive to pull the Army back up to the high ground of public respect.

"I did it in absolute conscience," said Talbott of that action against Calley, which fractured the Army he loves. "Nothing made known to me since as a result of the trial—has brought me to a different conclusion, the slightest furor notwithstanding."

Now, he said in an interview, it is time for the Army to move beyond Mylai. The institution did its duty in cleaning its own house, Talbott said, and now must come to grips with the other problems.

"I am genuinely convinced that the nation requires an armed force and an Army," Talbott said. "It is just necessary to take whatever steps are required to create the sort of Army the nation needs and wants. There is not the slightest doubt in my mind that it can be done."

To show that it indeed can be done, Talbott—as commander of this base and its Army Infantry School—this year started teaching leadership to sergeants and officers all over again—no matter what their rank or experience or medals.

The Army's top command was so impressed by the effort that it has exported the new course to other training commands. And Talbott thinks civilian society could adopt it with profit; he urged visitors to see for themselves.

The race relations segment of the course, for example, opens forcefully.

"Today," said the black instructor from the stage in front of the classroom, "I'm going to be the NUF—nigger up front." He explained that the term was coined to cover blacks displayed in front offices to avert charges of discrimination.

The instructor was Maj. Tyrone Fletcher, 32-year-old son of an impoverished Baptist minister from Defuniak Springs, Fla. He spoke with a missionary zeal to the audience of sergeants and officers sitting at small tables around the classroom.

"Let's take this white soldier now," Fletcher said. "He is in the Army, and he has developed certain pre-conceived ideas about people of color. Let's face it. Let's be realistic.

"He might come from a home—come from a background—where in his home, in his environment, in his school, nigger is a household word." He shouted the word nigger at the officers. Many of them blinked.

"He might have grown up in a home," Fletcher continued, "where, if the maid drank out of a cup, the cup was boiled before anybody else used it.

"He might have grown up in an area where the only time blacks were discussed was when someone looked at the newspaper stories of rioting and said, 'Oh, oh. They're at it again.'

"The point is that even if a young soldier is from Utah, he comes to you with ideas and notions about people of color. When he starts to relate to a man of color it is going to affect him in how he performs.

"So consequently, you must be aware of this. Whether all these preconceived ideas are real or not, those are ideas and attitudes that you—the leader—must deal with. You must face up to them."

"The first thing you have to do," Fletcher told the sergeants and officers now sitting like scolded schoolboys in front of him, "is to admit to yourself that we basically are racists. We come from a racist society. And color means certain things in our society. Once we admit that, then we will be able to deal with it and develop normal relationship among people of all races."

With Fletcher's speech as the warmup, the race relations seminar went on to black history. Then came the training scenes on closed-circuit television, and the challenges for the students to say how they would handle difficult situations.

One white sergeant offered a prescription for the man who wouldn't "work for that damn nigger."

"Educate the man," he said. "If that doesn't work, then you have to discipline him."

Major Alfred M. Coke, a white instructor, provided the textbook answer to the free-wheeling discussion. "Get over the idea," Coke said, that the black captain in the scene "is a qualified individual or else he wouldn't be in this leadership position."

The themes are repeated throughout the seven-hour course; be aware, examine your own prejudices, care about your men, educate them, be sensitive.

"We must take a second look at everything we are doing with the goal of insuring that what we do makes sense and that anything that does not make good sense is examined critically and changed so that it does," the course's 135-page manual states in its preface. "Our style of leadership," the manual exhorts, "must respect the individual dignity of every man. There is no room in today's Army for the shouting, screaming, harassing style of leadership."

An example of the new guidance:

"Give the soldiers a chance to live up to their new freedoms such as getting to work on time without having a reveille formation. For those who respond correctly, the reins stay loose."

While those of us who grew up before World War II accept the necessity for hard work, the manual says, the young man coming into the Army today may work "for self-gratification, the ego needs, for self-realization . . . Hard work is no longer necessarily a virtue . . . Today's young soldier rejects and resents imposed solutions and dogmatic answers . . .

Such searching individuals, the manual says, "have re-emphasized many of the values the older people have been preaching about the value of the person, the dignity of the individual, honesty, integrity, compassion. These are excellent values on which to build a nation and a modern Army . . .

Recommended reading for the course would not be out of place at a liberal arts college. Books named include: "Like Father, Like Son, Like Hell;" "The Greening of America;" "New Patterns of Management;" "Let Them Eat Promises;" "Black Power;" "The Autobiography of Malcolm X."

In the discussion stimulated by the televised training scenes, some of the sergeants in the class were skeptical about "sensitivity" being enough to keep troops in line. One complained that today's sergeant needs "four witnesses and two television cameras" to make a case against a GI who steps out of line.

Sergeants also are unhappy about another manifestation of sensitivity. They complain that commanders now have so many open-door policies for enlisted men that the troops no longer have to go through their sergeants. The noncommissioned officer, goes the complaint, is the odd man out under the modern Army concept.

Talbott's answer to such complaints is that they are part of the communications gap that the Army leadership is closing. He contends that the reforms will be welcomed once people inside and outside the Army understand that the reforms are for the good of the service, whether a volunteer Army proves feasible or not.

Top generals assert that such efforts as upgrading leadership will make the Army well again. The cure will come from the new emphasis on understanding today's young man; restoring his unit pride as the in-and-out turbulence associated with Vietnam days passes; substituting adventuresome training for make-work duties; making the barracks safe and more comfortable to live in, and giving young officers less paperwork and more authority over their men's training.

This will take time, of course, and many junior officers contend there is not enough time to rely on the generals' prescribed remedies. They want radical change. "What is needed," said a lieutenant on this base, "is a heart transplant. But the generals, like the human body, just physically reject such a radical change." These officers think the public and the soldier want radical change.

Talbott believes there is still a reservoir of good will toward the Army on the part of the American public, and that the only way to draw on it "is to clean our house. And in the long run, I am absolutely convinced that the American people will judge us for what we are and not what anybody says we are—me or anybody else.

"And if we are straight and we are loyal, and if we are constructive as far as the country is concerned, I am absolutely convinced the American people will consider us as such."

HOUSE UNITS TO STUDY ARMY PROBLEMS

The House Armed Services Committee said yesterday it has begun an "all-out" investigation to learn the extent of drug use, fragging, desertion and other personnel problems in the armed forces.

Chairman F. Edward Hébert (D-La.) said in a statement "there can be no doubt that the armed forces in general, and the Army in particular, face monumental challenges to their existence as fighting forces. The problems have to be identified, they have to be acknowledged and they have to be dealt with firmly, fairly and quickly. The American people have a right to know where we are headed and the seriousness of the situation."

Hebert and Rep. Leslie Arends (R-Ill.), senior Republican on the committee, announced that four special subcommittees are now or soon will be at work on the investigation.

One unit headed by Rep. Dan Daniel (D-Va.), a former national commander of the American Legion, is studying the problem of attracting and retaining enlistees and career personnel. Another under Rep. Elliott Hagan (D-Ga.) is investigating drug abuse by servicemen.

A third subcommittee under Rep. William Randall (D-Mo.) is beginning an inquiry into the United States commitments to NATO and its ability to meet them. A fourth group under Rep. Otis Pike (D-N.Y.) will look into the utilization of manpower—the desirability of rotating units located outside the United States, the ratio of support forces, and the ratio of officers to enlisted personnel.

MAJOR FLETCHER: "I FEEL WE WILL SEE MORE ERUPTIONS"

Maj. Tyrone Fletcher, 32, is one of the Army's young black leaders of the effort to improve race relations. He helped develop the race relations course for the Army Infantry School at Ft. Benning and is active in black-white committees dealing with the problems off-post in Columbus, Ga. He considers the black-white confrontation the Army's most serious problem.

Q: Do we have to go through in the Army what we went through in the ghetto—an eruption as the blacks demand what they consider their long neglected rights?

Fletcher: It might erupt in certain areas, but I don't think it will be an overall eruption throughout the Army before we get the problems solved. Overall, the Army has started to do things. It has recognized the problem. You're dealing with a system, though, that you just can't plug something and change it overnight.

Q: What is your advice to those commanders, especially in Germany, who said the blacks are ganging up on whites; that blacks are jumping ahead in the chow line, and that black-white crime is very specific—black vs. white dope rings, this confrontation business?

A: First, you have got to face the problem and deal with it in an objective manner. You have got to sit down and start talking about these things to the people who are doing it, to the soldier. The commander has to become aware—not just say, well, the blacks are doing this, the whites are doing that—become aware of some of the motivating factors. Re-education of the commander, really, is what it boils down to. The commander has to educate himself so he will be able to sit down and discuss these things with the soldier and find out why:

Q: You said in your lecture to the class here that the confrontation between black and white is the worst problem in the Army today. Is that going to get worse before it gets better, do you think? Or are we on our way out of the woods?

A: I don't feel we are on our way out of the woods. I really don't. I feel we will see more eruptions, as far as our society is concerned. The [black] nationalism is moving faster than the reforms and other factors are adding to frustrations, like the lack of jobs.

As for the Army itself, if it continues to move like it is going, the situation is going to balance out. We still have some individuals at all levels who are not sensitive but the Army has started to recognize this and said, "O.K., this is what we have to do."

Q: How do you explain the seeming contradiction of improved conditions for blacks in the Army and yet young blacks protesting more than ever?

A: When you understand the psychology of the whole thing—when you understand that the need is immediate, then you can understand why. There is a builtup hostility within blacks because there has been no outlet; they have been hiding it.

The parents of those 19-year-old kids hid that hostility from the outside world. But from their actions at home they instilled that hostility and the things those young kids saw happen built hostility within them. But now, those kids say, "I'm not going to mask my hostility. I'm going to express myself." And when the hostility does come out, it shows up in varied forms. And I don't know how far it is going to go. It is climbing now.

Q: Is there likely to be a white reaction to this black hostility—putting us back to race riots? It hasn't happened yet in Germany.

A: It has not. This is what I don't understand. And this is why I say I really can't understand the psychology of it all. It seems to me, though, that there will be something of a—for lack of a better word—white backlash.

Q: Is there any way to avoid that, now that the confrontation has gone this far?

A: I don't think there is any way to avoid it at this point. One thing we can do as a step toward preventing it from happening is to get these people into situations where they can talk out these things.

Q: Why do some of the young blacks call you an Uncle Tom?

A: Because I tend to say that you can't beat the system on the outside of it. The only way that you are going to be able to deal with a system that you feel is wrong is to become part of that system, especially if you are in the minority. You can't fight a total system by being on the outside of it. You've got to move into the mainstream and you have got to have something to offer.

LACK OF TRAINING OF NCO'S IS A REAL BIG PROBLEM

Here, in their own words from taped interviews, are representative complaints about conditions in the Army today from veteran sergeants, traditionally the backbone of the Army.

"Yesterday morning I had a Pfc. stand in front of me—we were out in the street, nobody was around—and his first comment was, 'There's no witnesses around here.' And he proceeded to tell me what he thought about me. He continued on and said he had 30 days left but there were three people in the troop who were going to kill me. They were going to blow my car up.

"This individual is so erratic that you can't pay any attention to him. Yet I've had this man since last November. He has two field-grade Article 15s [a form of non-judicial punishment, such as a fine], he has three troop-level Article 15s, he is pending another field-grade Article 15 and yet I can't get rid of him.

"He is 21 years old. He's white. I can't get him put in jail. My word is in question. He has no respect for authority whatsoever. I put up with this stuff every day."

"The NCO's word isn't taken at face value any more. If you don't have two witnesses—why, to give an Article 15 the other day it took four witnesses, four witnesses for me to get the disciplinary proceedings under way. . . . Your word as an NCO today is no better than a private's word. If a man refuses to take an Article 15, the JAG (Judge Advocate General) officer won't go into court if you are the only witness."

"The Army has to find a way to get rid of people faster who don't want to be in it. . . . They're a bad influence on the young soldiers coming in. . . ."

"The race problem for us [in Germany] isn't any different than it was 10 years ago. But at the battalion level they are afraid to get their names in Overseas Weekly and so instead of taking the strict discipline on a guy who is black, they are scared somebody will say they're prejudiced so they'll let the guy go."

"The kids coming into the Army today don't get what they expect out of the Army in the way of discipline. I think most of them are dissatisfied because they don't get the strict discipline their fathers told them to expect."

"The young soldiers have so many people they can see right now that they don't even have to see us. These officers have open-door this, open-door that. We help a lot of people solve lots of problems without going beyond the top sergeant in the unit. But now we've got guys going to the colonel telling him they haven't got any mail from their girl friend. This kind of thing leaves us completely in the dark . . .

"This has nothing to do with old Army or new Army. This is breaking the chain of command. It should never be broken. The soldier doesn't have to tell us his problem, but he should tell us he is going to take it up with the IG (inspector general). the colonel or whatever. We shouldn't be the last ones to know."

"If you have to supervise the ones (younger noncommissioned officers) who are supposed to help you supervise the men, then you have got more problems than ever. When I made E–5, boom, that was it. I was a sergeant and had to stick with other sergeants, not my old buddies of lower rank. Not any more. A lot of these E–5s and E–6s made it within two years and just keep hanging out with the men, drinking with them, too."

"Lack of training of men becoming NCOs is a real big problem. In my 16 years I've been in units where tank commanders were Pfc. because the Army did not have a bunch of NCOs. Now we have got just the opposite situation. We've got a bunch of NCOs with hardly any training at all for their jobs.

"I know for six or seven years in armor they have not had a branch school for the NCO. They used to have a 16-week school for armor NCOs at Knox. They cut it out for lack of funds.

"The way things are now, a man theoretically could come in the Army, be a private today and go all the way to an E–7 (sergeant first class)—and in some cases this has happened—and never once attend a school in his job."

"If I were a dictator tomorrow over the Army I would reinstate the policy where the commander—low unit troop commander, company commander or battery commander—could say, "Sergeant So-and-So, you're going to NCO school."

"You can't send a man to NCO school anymore. He has to volunteer to go there and learn his job. And they could not volunteer. How else can they learn their job? So they're making NCOs without training."

CIVIC ACTION: ARMY'S NEW BATTLEFIELD

(By George C. Wilson and Haynes Johnson)

CENTER, COLO.—It was a relief, after seeing the ravages of Vietnam, to look down from the gunner's seat of a Huey helicopter and this time see soft yellow farm fields unscarred by bomb craters.

Spread out below on the floor of the San Luis Valley, surrounded by the awesome Colorado mountains, was the farm town of Center, population 1,460. Sixty percent of the people are Chicanos. Most of them are poor. Center, long ignored by the rest of the world, is now the battleground for a new type of war being fought by the U.S. Army.

This time, though, the war has a constructive—if not altogether uncontroversial—purpose. There are no guns, no search-and-destroy missions and no body counts.

If the Army wins this new war, Secretary of the Army Robert F. Froehlke and other leaders believe, better days are coming for the institution.

The Army is calling its new war "domestic action." The idea is to use Army resources to help impoverished communities help themselves. Here the troops involved are the 52d Engineers based at Ft. Carson, Colo.; in North Carolina, the Green Berets are involved with health care and other sociological activities near their home base at Ft. Bragg. Their activities, although conducted quietly, are widening as the Army looks for something constructive to do in peacetime.

Antimilitarists, some politicians and many others recoil at the idea of the Army intruding into civil affairs, however good its intentions. To some, domestic action sounds like pacification all over again—despite the bitter experience with it in Vietnam.

The Army leadership knows all this. It feels, however, that such criticism can be answered successfully if the critics will only look at domestic action dispassionately and not through eyes blurred by Vietnam.

Center is one of the places the Army invites its critics to inspect. Froehlke himself went to the town and commented enthusiastically on what he saw. He wants the Army to do more of it.

The beauty of domestic action, Froehlke says, is that the soldiers can perform the training they would have to undergo anyhow and yet they can do where they can see positive results.

The young people in today's Army, the secretary says, "are far more idealistic, far better motivated than my contemporaries back in World War II. They want to feel as though they're contributing to the overall good.

"Now, if we can explain the peacekeeping mission of the Army, that's one step" toward convincing young Americans that the Army is not just "a war machine. It's a machine prepared to wage war in order to keep the peace. Now that is not just semantics; that's vital if we're going to get these young people in the Army."

Froehlke, who only took office on July 1, concedes that public relations considerations are part of the appeal of domestic action. Such projects explain "to the public generally that we have human beings in the Army that have the same human motivation, the same desires as anybody else. And they want to help a guy who is down and out, a community who is down and out."

Center—part of it, anyhow—is indeed down and out. From the helicopter, it looks like a grid of low adobe structures plopped amid yellow and green farm fields running up to the mountains. Up close, the Chicano sections are slums: abandoned cars in the alleys, wood piles to burn for heat, outside privies, no running water. Some children get sick on the poisoned water coming from backyard surface wells.

The residents, living off widely spaced harvest checks, cannot afford to pay for paved streets or running water. The surrounding beauty of the Colorado countryside mocks the pain of many of the people here.

The Army—in the form of 15 men with trucks, a bulldozer and a front-end loader—came into Center early this year. The first invitation was issued, ironically enough, by Terry Marshall, a conscientious objector who directs the federal government's Head Start program here, when he asked the Army to truck in some surplus government equipment.

Maj. Gen. John C. Bennett, commander of Ft. Carson, told a local citizens group that the Army could do more. Much of the work Center needed to have done would provide useful training for the soldiers, he said. Bennett stressed that the Army could provide only the manpower and equipment, not the money or material. Also, he said, the town itself must decide what it wanted from the Army. And it would have to submit a request.

From then on, amazing things began to happen in Center, recalls Marshall, who says that—although it is his home town—the townpeople consider him anything else connected to federal welfare as radical, if not communistic.

"The Army," said Marshall, "gave me credibility. The old attitude around here was, 'If it has to come from OEO (Office of Economic Opportunity), we don't want it whether we need it or not.' But the people around here trust the Army. So when they saw us working together, I was able to get someplace."

Besides that, the town realized it had to organize itself to obtain benefits from the Army. This gave birth to the Planning Commission where, as the citizens tell it, for the first time in years Anglos and Chicanos sat around the same table and jointly decided what Center needed most that the Army could provide.

The decision could have hardly delighted Pentagon image makers, bruised as they are from past revelations about the American role in Vietnam's "tiger cages." For the town of Center decided that what must be built first was a town jail.

That is what the Army engineers are working on now. It brings to mind the World War II novel. "A Bell for Adano," in which the Italian villagers explain to the U.S. army major that what their town needs most is a bell.

"You wouldn't want to put anybody you knew in that place," said a policeman of the jail being replaced. "We have to send our juveniles and any women to another town if they get arrested," said a Center housewife. "The jail we have now is a disgrace," said a civic leader here.

So every morning and every afternoon, the people of Center see a group of Army GIs dressed in fatigues and armed with hammers and saws building their new jail alongside the town hall.

At night, the officers retire to makeshift quarters in the white cement building still sporting the name Long Horn Cafe. The enlisted men sleep in the basement of Center's Catholic church.

One of the sergeants supervising the work at the jail is Linfred Davis, a veteran of 20 years service and, as a part Sioux, a man who has lived on an Indian reservation. "I hope," he said, "that the Army after this goes in and helps those people on Indian reservations. Nobody else will. It would really be a good thing."

Other soldiers interviewed had similar comments. Their theme was that if Army machines and men have to be kept busy anyway, why not use them where they can do some good, rather than keep them tied to a base with make-work duties?

Lt. Juan Gomez is the closest thing to a field commander for the Army effort at Center. Only 24, he is credited by local citizens with sensitivity and understanding far beyond his years. A Chicano himself, he knows what discrimination feels like.

"My teacher paddled me in front of the class once because I spoke Spanish, not English," he recalls.

Gomez found Army life miserable—until he got his chance to help his own people. Yet he realizes that if he, as a representative of the Army, offends one people here, the whole domestic action program will suffer. To walk with him around the little town of Center is like walking with a politician with a sure feel for his constituency.

To a fellow Chicano asking about whether the Army intends to pave the streets and put in water, Gomez speaks Spanish; to the mayor of Center, he speaks plain English, and to the commanders who come through the town occasionally to check up, he uses military terminology. Gomez attends meetings of the town council, planning commission, school board. All are places that may want to ask what the Army can do.

"It's good for the army," said Gomez of domestic action work, "because it gives the soldier some sense of accomplishment, some usefulness. And it is very productive training."

The townspeople find it benefits them, too. "The Army has been real good for our town," says Mayor Keith H. Edwards. "We haven't had any real trouble. I haven't had a single complaint about them. The thing of it is, we don't have any funds to do what they're doing for us."

Further testimony to the long-term poverty of Center is the town hall built by President Franklin D. Roosevelt's Works Progress Administration in 1937. Now the town fathers are asking the Army to modernize it; they still do not have enough money to pay for the labor required.

At a trailer-sized clinic the Army helped build for Center, the director talked of the unifying force of this military presence in what is supposed to be an antimilitary era in the United States.

"I don't think we could have accomplished anything without the Army bringing the community together," Jerry Archuleta said. "Each time I think the Army is going away, I shudder."

Townspeople, the local newspaper editor, civic leaders, policeman—all had praise for the Army's activities. This does not mean there is no resentment, but the prevailing view is positive. Social worker Marshall says he now regards the Army "as another resource to be drawn upon." He would like to see the Army go beyond construction and accept some of Center's young people into its training schools to learn marketable skills.

One negative comment came from Dr. Anthony John Sliwkowski, the dentist at Center's new clinic. "I was a little resentful of the Army coming in here and finishing the clinic," he said. He feared the people would come to lean on the Army as the Eskimos relied on the white traders, only to be abandoned.

Back in Washington, at the Pentagon, there also are some reservations about the Army's getting into community action programs. Brig. Gen. Robert G. Gard Jr., for one, wrote in the magazine Foreign Affairs that "it would be wrong to use military units to engage in civic action projects in American cities, for this would thrust the armed services into sensitive activities for which they are unqualified. Poor performance in these projects, or even controversy over selection of priorities, could lead to further resentment of the military establishment. . .

Defense Secretary Melvin R. Laird, like Robert S. McNamara before him, is well aware of the political explosiveness of domestic action. But he believes it is a risk worth taking. Froehlke, taking his cue from Laird, intends to increase the Army's domestic action program.

"We must do more, much more," Froehlke said. "As long as we limit it to something that will help the soldier in his training mission; as long as we can accomplish our other goals without adding more men or more dollars, I see no limitation.

"I don't see the politicians objecting," he said, "because we don't take over the leadership."

Some Army strategists argue that the time is coming when killing people will be an unacceptable form of warfare. Killing would be done only as a last resort, they theorize, just as dropping the H-bomb is looked upon as the last resort nowadays. But winning over uncommitted peoples through dramatic improvements in their surrounding may indeed be the battleground for contending world powers. If so, they reason, domestic action may turn out to be the most critical military training of all.

Froehlke believes that day is still far off,

"but I think, and hope, we're heading in that direction. And as we get closer to that time, domestic action has to become more and more important."

ARMY'S FROEHLKE: "WE'RE CLOSE TO BECOMING THE UNDERDOG"

Robert F. Froehlke became Secretary of the Army on July 1. In this tape recorded interview at his Pentagon office, he talks about the problems of the Army and gives his views on the future.

Question: What kind of perspective do you have on the Army's problems today?

Froehlke: First of all, crime, drugs, race—I think you'd be naive if you didn't say "Yes, the Army does have problems. It has serious problems"—and you know this—because society has those problems. And any Army that I'm involved in, I want to be a cross-section of society. Therefore, there's no way to avoid the problems of society.

Now the one area where I think we have it worse than society is probably drugs in Southeast Asia, because the drugs are cheap to come by and they're easily available.

But elsewhere in the world I don't think we have a worse drug problem, nor do we have a worse race problem. But we certainly have a problem—and I don't say that to say: therefore, it's society's problem.

As Secretary of the Army and as officers in the Army, we in the leadership of the Army have the responsibility to try to solve these problems, and I think we have a terrific advantage because we do have a more structured society. I think we may be able to do a better job than society generally to solve the problem.

Q: What are your views on the problem of barracks crime and security?

A: I haven't been to Europe and that's specifically where the problem, according to your articles, is the worst. I haven't been there. I am going next month. I am going to specifically see for myself. I suspect it is a problem. But in talking about the degree of the problem, that has to get No. 1 priority.

We must, using any means necessary, make the barracks safe for the men. The men—that's our responsibility; it's their home for two, three or 20 years. And a man's home must be safe. Period.

Q: Mr. Secretary, would you address yourself to the race problems of the Army?

A: This sounds like a platitude. I don't think it is. I think the race problem is only going to be solved by getting all the people together around a table and talking out the problem.

It's when groups of differentt color, different cultural background, different financial background—whatever it is—form their own ghetto, that's when you have problems. What you have to do is to show that all of us in the Army have similar problems, all of us have common goals. And the only way you're going to do that is improve communiciations among people making up the Army. That's the solution.

Q: Do you think the Army's troubles have ceased, or will they increase?

A: I think the Army has, if not bottomed out, has come very close to it. For another reason entirely. In a democracy, the Army, the armed forces, have to have the support of the people. And we don't have the support of the people, in my opinion. However, most of the reason why we don't have, I think isn't too valid today.

I think that some awfully cheap potshots are being taken at the Army by politicians, by leaders, any number of other people because it's popular. The American public falls for stuff like that for a little while.

But I think that rather being the big guy who it's good to take a cheap shot at, we're close to becoming the underdog. And I predict—and I hope it's during my tenure; I think it will be—the American public is going to do more to bring the Army back up to where it should be, to becoming credible, by saying, "Gee, here's an underdog. The big guys are taking unfair pot shots at it."

Now, I also think we're giving them some ammunition. I think we are identifying our problem; we're doing something about it. But the American public loves the underdog, and the Army is coming awfully close to being the underdog, I think.

Q: Has the Army as an institution been a victim of the Vietnam war?

A: Clearly, the Army has—it has to be. I like to say our country isn't divided because of Vietnam; it's fragmented. And what one institution is more involved in Vietnam than the Army? There isn't any other. So therefore it has to follow that the No. 1 problem of the Army is Vietnam. And when we do extricate ourselves from Vietnam, we are going to make the solution of a lot of problems much easier.

Q: Mr. Secretary, would you comment on what the Army is planning to do to make service more interesting once the war is ended?

A: Maybe the keynote is that we're attempting to make the Army more professional. And by that we don't just mean the officers and noncoms; we mean right across the board. Because, in this day and age at least, people want to belong to a profession.

And with a profession you have a certain foundation of knowledge which is important, you have a code of ethics, you have an esprit among the professional types. We have a program that goes, I think, a long way toward improving this profession. So that's maybe the foundation.

There are other things—management techniques. You saw a lot of them. Out at Carson is just an example, but I think you saw a number of management techniques that I wish a lot of corporations could see. Particularly in the communications area. Particularly in the way to treat subordinates. I think our techniques are explaining *why* much more than, "Do this right now this way."

And then the third area is this life style. And in the life style we include, of course, some of the barracks which you have seen at Carson and Benning and Bragg. Not the unimportant, but the relatively simple things like letting people eat at hours that they'd like to eat, and eat what they like to eat—those things are important in life style.

But then we get to domestic action, and I would include domestic action under life style because these kids, bless them, are far more idealistis, far better motivated, I think, than my contempories back in World War II. They want to feel as though they're contributing to the overall good.

Now, if we can explain the mission of the Army, the peacekeeping mission of the Army, that's one step. It's not a war machine. It's a machine prepared to wage war in order to keep the peace. Now that's not just semantics; that's vital if we're going to get these young people in the Army.

Let me tell you what I think is a beautiful story because I think the Special Forces [Green Berets] can do more domestic action than any other unit in the country. Contrary to what many people believe about the Special Forces, their primary mission is to go into a community and help that community help itself, be it South Vietnam, be it darkest Africa, or be it in the U.S.A.

So what the Special Forces are doing in North Carolina and southern Georgia is in communities. They're helping them in the area of medical needs—where they just don't have the doctors to take care of them. When I was in Ft. Bragg I sat down, as I do wherever I go, with the E-4s and under, then E-5s and above. I sat down with 20 noncommissioned officers of the Special Forces—the "professional killers," as some people would say. And I said, "All right, now you've got your Secretary of the Army. I'm new in the job, I haven't formed too many opinions. Tell me, in 20 minutes, what can I do for you to help you do a better job?"

And I was shocked—pleasantly shocked, but shocked—at their reply. The consensus—the one thing they wanted—was to do even more in the domestic action area. They got satisfaction out of it. It was good for their training. So our people are demanding it.

Now, also, we want to do it, but we want to do it because we can. First of all, it has to be this: is it fulfilling our training mission? We can't do it solely because it's nice.

Secondly, can we do it within our budget and within the time constraints of the commander to get his mission done? See we don't get any extra money for this. And those are limiting factors. But within that, we want to do, and we are doing, I think, an increasingly large amount of this because it fulfills the mission it doesn't add any more in time or money and our men get so much satisfaction out of it.

Q: Mr. Secretary, what would you say to the idealistic young men who don't want to be sent out to kill someone and asks your views?

A: Well, really what I have told myself, because I like to think that I'm idealistic and sensitive, and I don't want to be in charge of an organization whose mission is to go out and kill somebody.

I think the best way to insure peace is to have an armed forces that are prepared to wage war.

And I think that's the only message we can give them. We can give them other fringe benefits. We're going to.

Q: What is an Army for? Why do we need it?

A: The primary mission of the Army is to insure the national security of this country, and you secure it by being ready to fulfill the commitments which the President and the Congress have entered into with other countries around this world. Now I might add, we have a lot of other commitments because the Army has some very unusual situations. And as Secretary of the Army, I wish we had no other commitments, because people can understand that. It's when we are called into a community at times of civil disturbances that our image is shattered. And yet, who among us would say, when a city is burning, "Don't send the Army in because its image is going to be hurt." And times like that the Army has to.

THE ARMY: ITS PROBLEMS ARE AMERICA'S

(By Haynes Johnson and George C. Wilson)

Somewhere among the millions of service records stored in the military computer memory banks there must be two of our own. One dates back nearly 20 years to the Korean War: Pvt. E-1, U.S. 51176574, Infantry, later prison guard, later Leadership School, later Officer Candidate School, later 2d and then 1st lieutenant, 04009365, forward observer, Artillery. Nothing heroic or unusual; just another American who served in the Army.

The other goes back even farther, to the last days of World War II when the big worry of a high school boy was missing it: Aviation cadet, 7695601, U.S. Naval Reserve, V-5 course at Georgia Tech, flight training, then discharge. Waste of taxpayers' money.

We realize there's no greater bore than old soldier. It was always greater, grander, more glorious when we were in. It wasn't, of course. In those days, we had our dissenters, our malcontents, our soldiers who were jockeying furiously for EUCOM (Europe vs. FECOM (Far East) orders.

And today's generals will remind you of other Army problems from the past: the time when Gen. George Washington wrote a letter to Congress complaining about the terrible discipline of his troops; the Civil War draft riots in New York City; the deteriorating and brutalizing Army conditions during the frontier Indian campaigns; the

kind of public downgrading of the military at the outbreak of World War I when cattle cars had higher priority than troop trains; the "From Here to Eternity" climate in the barracks in the 1930s; the morale problems after World War II and Korea.

But no amount of personal experience or historical perspective prepared us for a return to Ft. Dix, N.J., which one of us remembered from training and another from visits in high school days.

Dix, the largest Army base in the most populous section in the country, sprawls over 33,000 acres. It is a post where new inductees come for their first look at the Army and receive their basic training—as well as a separation center for those leaving the service after duty overseas.

The new recruits had come into the base by bus at night, young men from Maine and New York, Philadelphia and Baltimore, blacks, whites, Puerto Ricans. They sat in the reception center facing a "freedom shrine" display with copies of the Declaration of Independence, Constitution and Bill of Rights. A television set flicked on and the figure of a general appeared giving them their formal Army welcome and first briefing.

"Millions of trainees, just like you," the general said, "have gone through basic training . . . If you work hard and show interest you will enjoy your service."

The general's picture dissolved and was replaced by another officer. He warned them "do not leave your personal valuables unguarded. No one here at the reception center is authorized to ask you for money for anything. . . . My advice to you is to stay alert, pay attention and be proud you are a member of the United States Army. Good luck."

The experience that followed had the same disconcerting mix of noble purposes and dismaying reality.

Minutes later, the troops filed outside into the night and inside an old, large, gray van more appropriate for transporting prisoners. An officer standing by said it is nicknamed the "cattle car."

"I've seen one of these in a riot," a young black said.

"I know where this goes—straight to Vietnam," said another.

The soldiers were driven to their barracks, the same wooden buildings that have been used since World War II. Inside, they were briefed again—and again warned to keep their belongings locked because of the possibility of theft. They were shown photographs, posted on the wall by the door, of the officers and noncoms who were in charge of them. Only those men whose pictures were displayed were to be admitted to their barracks, they were told. Anyone else, regardless of rank or uniform, had no authority to be there; they should be kept out until cleared.

Next, the soldiers were marched, still in their civilian clothes, to the mess hall for their first Army meal. Along the way they passed another group of soldiers straggling by in the opposite direction. These were veterans just returned from Germany. They were about to be separated from the service.

The old soldiers hooted and jeered at the new ones.

In the mess hall, the captain who commanded the newest Army arrivals was sitting over a cup of coffee, talking about the soldiers today. Things have got worse in the last three years, he said.

"Some of the kids come in with arms like chicken pox scratches on them from injecting heroin," he said.

When asked about all the emphasis on security and thefts, he explained that Dix has been plagued by crimes on post. There have been armed robberies in barracks, and on the main parade ground a sign had been posted warning soldiers against the possibility of attacks. The soldiers, he said, are cautioned not to walk alone on the post. They should go out in groups.

It would be interesting, we said, to talk to those soldiers back from Germany we had seen passing the recruits. They were billeted only a couple of blocks away. There was a pause. Finally the captain said he didn't think it would be a good idea. He seemed embarrassed. Then he said: "It isn't a good idea for a couple of guys to walk out alone at night. You might get mugged."

That was to become a familiar theme at bases in America and overseas. Some of those scenes of conflict already have been described in these articles. We know the sight of Merrell Barracks in Nuremberg, Germany, will remain an indelible memory. We can't imagine serving in an Army barracks like that, and we wouldn't want our sons to, either.

None of that is to suggest that every Army unit is wracked by crime, drugs, racial turmoil and all the other demoralizing factors explored in this series. For every antiwar dissenter, addict or criminal within the Army, there are countless more soldiers performing their daily jobs well. The Army is also fully aware of its complex problems—and is trying to do something about them.

Indeed, to us the single most striking fact that emerges from viewing today's Army is the extraordinary candor with which officers and men have expressed themselves, often at possible risk to their own careers. The Army cannot be accused of having attempted to ignore or minimize its problems.

Such soldiers as Gen. Michael S. Davison, the commander in Europe, and lower ranking officers and men down the line have spoken eloquently about the Army they knew in the past and the Army they see today. You can't help but wonder whether mayors, governors or congressmen would be so frank in public about problems in their own communities.

For the past eight days, we have reported voices of anger and despair, bitterness and fear, confidence and optimism. At the least, these should be proof that the Army is far from the monolith its enemies portray, an institution filled with Colonel Blimp figures and Catch-22 examples of bureaucratic stupidities.

Running through the comments have been four distinct themes: that the Army is merely a reflection of America, with all its strengths and weaknesses; that the Vietnam war has strained the Army almost to the breaking point, leaving a legacy of lowered morale and personnel turbulence; that these conditions are bound to improve as the war ends, and that, finally, the Army must rebuild and revitalize itself and thus regain the public support indispensable to an effective fighting force in a democracy.

Few persons could quarrel with this analysis. But there is more to it than that.

We don't think any fair-minded person who sees the Army today could conclude that the Army is about to strike its colors, sound a last recall and fade away. Neither is it possible to ignore the multitude of problems it faces nor to return without doubts about the future.

Some of the specific problems on which we have reported can be solved with relative ease and dispatch. If the American people are prepared to pay the price, money alone will do much of the job.

Money can buy a volunteer Army. Money can provide the kind of housing to which every soldier is entitled. Money can purchase the side benefits in recreation and other facilities that can make Army life more attractive. Security and discipline can—and must—be maintained and strengthened, even if it means cutting back on the present relaxed working schedules so that enlisted men and officers spend sufficient time supervising, or living with if need be, their men in their barracks.

Other problems will not be solved in the foreseeable future. Racial tensions and drug use will remain within the Army, as they will with American society at large. Through enlightened educational programs, leadership techniques and innovations, the Army can ameliorate them. Certainly a case can be made that the Army is making as earnest an effort in these areas as any other American institution.

Gen. Davison expressed the case for the Army as well as anyone when he spoke about race.

"I think as a group of people within the Army we have greater sensitivity towards the racial issue than you would find in any sampling of a million people any place you want to look in the United States. Now, I can't prove it, but this is my judgment from knowing how concerned we are about the racial issue within the Army and from talking to my civilian friends on the outside, most of whom couldn't give a damn, the ones with the white skins, about the racial issue.

"You can't be sensitive enough to this because there's no way to understand the problems of a group of people who have been systematically degraded and deprived for 300 years. They've got sensitivities that you and I or anybody with a white skin can't imagine. But I do think we're trying, and I do think we're sensitive to the problems and working hard."

A few days ago, and several weeks after he made those remarks to The Washington Post, Gen. Davison publicly stated over the European Armed Forces Network that black GIs in Germany face discrimination within the ranks and from German landlords and businessmen. He described that as an intolerable situation and personally discussed the problem with German Federal President Gustav Heinemann. He also said he was telling his commanders to place off limits to all American soldiers any place of business that has imposed racial discriminatory policies.

After that, Gen. Davison publicly stated that he has removed a number of company and battalion commanders throughout Germany because "they have been unable to show progress" in handling racial tensions.

But for all the good will and all the efforts, the Army's present problems are unlikely to be resolved merely by awaiting the final end of the war in Vietnam and the beginning of a new peacetime era. Attitudes, both within and without the Army, lie at the heart of the difficulties.

What the Army needs, more than one general said, is a lowered profile, a breathing spell, a time to stabilize and rebuild itself.

"What we need specifically," one commander said pointedly, "is less stories in The Washington Post."

Out at Ft. Ord, Calif., Maj. Gen. Hal Moore, the lean and trim post commander, gritted his teeth and, gesturing with clenched fists, kept repeating. "We're going to beat this, we're going to beat this." Then he said:

"I would like to see the idea brought forward to the public, from outside the Army, that military duty is honorable duty, that service to your country is honorable service.

"I would like to see corporations make it their policy not to accept a man for employment with less than an honorable discharge.

"I would like to see civilian leaders say, 'Look, let them up! They're defending our country well." I would like to see the press come out strongly and unequivocally and express what I'm sure they all believe—at least, I would *hope* they all believe—that there is a need for a strong, capable, efficient defense establishment and it's an honorable profession, and let's all of us try to get this back into perspective.

"I would certainly hope that the respect of the nonmilitary community does not reach the stage where people cause the military establishment to be less than effective in defending our country. What I'd like to see

is a man walking down the street feeling proud to be in uniform—and not have catcalls of obscene remarks made at him."

Here he fingered his own uniform and said heatedly, "This is tragic, this is indeed tragic."

If it seems strange for a leading American general to feel compelled to appeal emotionally for Americans to regard military service as honorable service, it is only another indication of how deep the present problems are. Privately, some generals reflect considerable emotion about what happened. Often the evidence comes across in subtle, poignant ways.

For instance, Gen. William C. Westmoreland, the Army's top soldier and the man whose name forever will be associated with the Vietnam war, carries a small card in his breast pocket wherever he goes. When he talks about the Army, he often pulls it out and reads from it. The card bears a quotation from John W. Fortesque's history of the British Army from 1899 to 1930.

The quotation that Westmoreland reads is:

"The builders of this empire were not worthy of such an Army. Two centuries of persecution could not wear out its patience; two centuries of thankless toil could not abate its ardor; two centuries of conquest could not awaken its insolence. Dutiful to its masters, merciful to its enemies, it clung steadfastly to its old, simple ideals—obedience, service, sacrifice."

Although Westmoreland carefully cautions his visitors not to misconstrue the first sentence about the builders of such an empire being unworthy of such an Army, he says he does find the passage characteristic of the United States Army during this era.

In Germany, another American general who had spoken at length about the Army's present problems and future prospects said goodbye to a visitor; then, as an afterthought, he pulled from his wallet a quote from which he takes solace. It was a poem entitled "Don't Quit."

It begins: "When things go wrong, as they sometimes will, When the road you're trudging seems all up hill" and ends with the lines "So stick to the fight when you're hardest hit—it's when things seem worst that you mustn't quit."

Hardly distinguished verse, but revealing of Army attitude, nevertheless.

One high-ranking general tried to explain the special ingredients that make a good commander. "You must realize," he said, "that a career officer is almost like a priest. He has to live by an ideal. And I'm sure it's strange to some, but he's basically an idealist. He's not cynical."

The assaults from within and without the Army and the feeling that the service has been tarnished by the Mylais and courts-martial have shaken the officer corps. Now, it's common—and understandable—to find officers reacting defensively or in anguish to criticism.

Listen, for instance, to a general speak about the Calley case. "We shouldn't have commissioned men like Calley," he said. "But we had to. We commissioned a lot of mediocrity. And we had to. We kept people in the service that otherwise we would have discharged, because we had to meet the requirements [of the Vietnam war]."

In such remarks, you can detect a tendency to say, in effect, "Look, it isn't our fault. The fault lies in American society that created the soldiers' attitudes and habits and the civilian leaders who ordered us to fight an impossible war and then wouldn't let us employ our full military resources." Everything would have been fine, if . . .

Both true—in part.

What is often lacking is perhaps the final step in candor: to draw lessons publicly from the mistakes of the Vietnam experience, including the Army's own. Or, as Alfred B. Fitt, the former Pentagon manpower chief already quoted in these articles, said:

"I think Vietnam's been an unmitigated disaster for the country, for the armed forces and for the Army. I've often pondered since I left the Pentagon how we managed to make such a mess of things . . . I wish I could find some consolation, some suggestion that all these people have died in a cause that was worth it, but I don't find such consolation."

It's hard not to conclude that the Army for a long time was out of touch with what was happening to the country—and not just the noisy, protesting segment of society—and within its own ranks. Perhaps that's not surprising. For a long time, political leaders were, too. From the end of World War II until Vietnam, America and its Army were riding high, deluded by a vision of omnipotence, and infallibility. That led to a type of mentality that made it possible to believe you could beat ideology with technology, defeat poorly equipped peasants with a blitz of bombs.

It was also easy to forget another lesson of American history.

Americans, as our Olympics record shows, perform magnificently on the short run, but not in the marathon. We tend to be more impatient than persevering.

Within the service you often find quite different attitudes when you go from the generals down to the young colonels and majors who will inherit tomorrow's Army. A number of the latter say the Army needs a change at the top, with the kind of dynamic leadership typified by an Adm. Elmo R. (Bud) Zumwalt, the Chief of Naval Operations.

They say it needs leaders who ask harder internal questions than seen to have been raised about the old assumptions: about the fascination with new military hardware at the expense of the living conditions of the men; about the sacredness of American commitments and traditional force levels overseas, including Europe. "Why not," as some officers in Germany said, "just show the flag?"

One of our strongest conclusions from Germany is that the Army has broken one of its most fundamental rules—that a leader's first obligation is to take care of his men. Our troops in Germany, in many cases, live worse than the Wehrmacht did when American forces conquered it in World War II.

Army wives, too, have been ill treated by the leadership. Moving 10 times in 12 years, we found, is not an unusual story from Army wives who somehow grin and bear it and make homes for their husbands and children.

Senate Majority Leader Mike Mansfield (D-Mont.) already has challenged the need to keep 300,000 American troops in Europe. Congress will debate that in the coming months and again next year as part of the national debate on reordering priorities.

Without passing on the grander questions of NATO strategy here, we would like to convey some of the impressions received while spending the night with American troopers charged with patroling the German border near Coburg. Their questions are pertinent to the NATO debate.

"How come we patrol the West German border even though the Russians don't patrol the East German border? Why can't the Rads [GI for the West Germans, who refer to Americans as comrades] do it?"

"Do you really think we could stop them with this if they did come across? This is what we have to stop them with." There were three armored vehicles, one of them broken, inside the garage he pointed toward.

Army officers and men in Coburg were serious about their work and doing their jobs. But obviously no one had managed to give them a sense of mission. Such a feeling of uselessness was even deeper among troops stationed farther away from the German border.

Junior officers—the lieutenants and majors who run platoons and companies—say this listless state demoralizes their outfits. One captain said, "If Mansfield did get half the troops out of here it would solve a lot of problems, like making it easier to get good quarters."

Instead of removing troops, the Pentagon leadership now is stripping state-side outfits to fill vacancies in the forces in Europe. It's something like giving more children to a mother of 13.

The Pentagon argument is that the more troops we keep on the NATO front, the easier it will be to get the Russians to agree to a mutual withdrawal of forces—the old bargaining-chip argument. Only occasionally do World War II generals who run today's Army admit that another reason why they want to keep 300,000 troops in Germany is to prevent the German army from rising again.

Another major joint made by the Pentagon is that President Nixon must have a maximum of opinions if he has to combat the Communists along the NATO line, including having enough conventional forces to stop any invasion without resorting to dropping the H-bomb.

That sounds more convincing in Washington than it does in Germany. We found an ironic symbolism in Garmisch one night when GIs from the German border were whiling away their hours of loneliness over beers in one of those garish service clubs. They had only a few girls to dance with. Their German contemporaries, though, were dancing across the street in a glamorous cafe which had a policy of allowing no Americans.

We can only wonder whether the NATO threat is so dire today that the American Army in Europe has to heighten its problems with race, crime, drugs, and housing by maintaining the present force level or increasing it. What is deterrence? What is security? What is in the true national interest? Do not these billions of dollars in new weapons built since World War II make it possible to reduce the numbers of troops on the NATO front, especially if the Army cannot take proper care of them?

Thus the Army, just as civilians have been doing for the last few years, must conduct a reexamination of priorities as it rebuilds for the future. Obviously, such an exercise demands the highest degree of professionalism by the Army leadership.

Younger officers realize this. One colonel told us: "I would fire everybody from colonel and above, including me, so we can reorganize ourselves fast enough. There is nothing wrong with our Army that the junior officers cannot fix."

The rebuilding job comes also at a time when President Nixon, as commander in chief, has ordered an all-out drive to turn the Army into a volunteer outfit. Almost every senior officer we interviewed for this series had grave private reservations about going volunteer. They said, usually after requesting the tape recorder to be shut off, that the American Army has always been close to the people; that a cross-section of American young men keep the Army in the mainstream of our society; that at least until Vietnam, men who have served the Army look back with affection and understanding on an institution which, in peace, has built railroads and dug a canal and, in war, has fought magnificently and victoriously.

The American draftee, including today's, always has been the best soldier in the field, the generals said. He never has had the civil-service mentality of the careerist—something the American Army might have in greater number if it did go all-volunteer. The citizen-soldier also has another attribute, they said. He has the education to master the sophisticated new electronic

weaponry and also the ingenuity to make, patch, fix and improvise in the field.

And never, these generals reminded us, has the American Army ever come close to threatening to take over the civilian government of this country. The separatism of a volunteer force, they said, could work against this tradition of a people's Army. The volunteer example of the Marines, they said, is not applicable because the Army needs so many more men with sophisticated skills that it would cost billions to buy.

This kind of searching questions are not unusual among Army officers today.

One of the most articulate soldiers we met was a young full colonel, the kind of man that represents the best in the Army. He is a West Pointer, has attended the Army War College, and holds an advanced degree in political science from one of the nation's oldest, most prestigious universities.

"If the Army's going to make it," he said, "it has to make it from the top down. We've got to take a good, hard look at ourselves. Our problem is that we have several armies and we're trying to appeal to several target audiences.

"As far as Vietnam goes, I think there are several lessons for the Army and the country. Maybe the most obvious is this: When faced with a choice of losing face or losing our soul, we'd better be prepared to lose face. Vietnam was real arrogance on our part. We refused to learn the lesson of France. It was our Anglo-Saxon sense of superiority, I think. We just never understood the real nature of this war.

"We are now facing a crisis of military professionalism and a crisis of the civilian-military relationship, but there's no sense in parceling out the blame.

"We must be very careful that we don't continue fighting the last war, because we now have a whole generation of officers whose experience is in fighting that strange war in Vietnam. That's one of our problems.

"There is going to be some tendency to feel the Army is being made the scapegoat, and there is inevitable resentment to that. On the other hand, there are a sufficient number of people in the Army who are very anxious to put Vietnam behind us, who want to learn from it and grow into a better professional force, to share the problems of society and do something about them—everything from race to drugs.

"But we also can't help but be influenced by the introspective mood we see in American society—this concern with moral values that we see in our youth. That I see in my own children. That maddening ability to ask those searching questions. I see it rubbing off the junior officers and noncoms.

"There are now enough of us who admit privately that over the years the military has enjoyed a very privileged role in gaining the bulk of the budget dollars. National defense has been a sacred cow, and as one consequence callouses have developed on our thinking. We must be much more thoughtful in terms of our national budget presentations, for one thing."

Then he said:

"I think we can go one of two ways—be very defensive, very introspective and impute blame and guilt to society and to civilian leadership and to specific individuals.

"Or we can learn something about ourselves that was worth learning and make us better. I am concerned over whether we'll be an effective fighting force. A lot will depend on our own inward-looking on this.

"If we handle it intelligently we might come out a better society. If we're just looking for devils, it's going to be worse."

Not only the Army faces those questions; but America herself.

ARMY ASKS FREE TV TIME FOR DRIVE

Army recruiting commercials offering 16-month European tours and lots of travel may be limited to late-night reruns unless the radio and television networks respond to an Army appeal for free prime time.

Secretary of the Army Robert F. Froehlke has told broadcast industry executives that budgetary restrictions may rule out a resumption of paid prime-time advertising, for which the Army spent $10.6 million last spring in an experimental Madison Avenue-directed campaign.

In a personal letter to the heads of each of the major radio and TV networks, Froehlke reminded them their stations "are licensed by the United States government" and "should provide effective public service time to support essential national programs."

"Therefore, I turn to you for assistance in increasing substantially the amount of public-service announcements, particularly in prime time, provided by your network and its affiliated stations to support Army recruiting," the Secretary's letter said.

"I am not thinking in terms of just doubling the weight of public-service advertising; I am asking for a five to tenfold increase."

NO RESPONSE AS YET

The Army said there has been no response to the letter dated Sept. 1. A copy was made available to The Associated Press.

Broadcasting stations are obligated under Federal Communications Commission regulations to devote a certain percentage of their air time to public service announcements. However, free ads seldom are run during the lucrative prime viewing hours of 7:30 p.m. to 11 p.m. During these hours one minute of commercial time on the TV networks sells for between $45,000 and $65,000, depending on the program.

Froehlke said in the past the amount and timing of Army public-service announcements have not been sufficient to attract the number of enlistees needed if the Army is to become an all-volunteer force.

In his letter, Froehlke called the results of the experimental paid campaign remarkable. He said enlistments in the combat arms—infantry, armor and artillery—increased tenfold, and attributed 8,000 enlistees directly to the ad campaign.

PROPOSAL REJECTED

But Roger T. Kelley Assistant Secretary of Defense of Manpower and Reserve Affairs, has rejected an Army proposal to spend an additional $3.1 million for recruiting ads this month and more in December pending analysis of the initial ad campaign by three independent research organizations.

The other military services have complained that some radio and TV stations dropped their public-service ads for these services in favor of the Army's paid commercials. And there is opposition from House Armed Services Committee Chairman F. Edward Hébert (D-La.), who is against spending any more money and contends the networks should provide free air time.

Mr. SCOTT. Mr. President, my good friend, Kenneth BeLieu, in his new position as Under Secretary of the Army, will have these very important responsibilities. I can think of no one better qualified to perform them.

We do need a restoration of pride in our armed services. I believe that when we get this monstrous problem of Vietnam off our backs, the morale of the Army and of the armed services will be expected to get better. Part of the fault in morale is that people do not want to get killed, and I think that is understandable.

Mr. President, last Thursday the Senate confirmed President Nixon's nomination of Mr. Kenneth E. BeLieu to be Under Secretary of the Army. As the chief of liaison to the Senate for the President, Ken has become a familiar figure in the Halls of the Senate. His new appointment is a great and single honor. It is a well deserved promotion and recognition of a job well done.

Ken has labored tirelessly to keep the avenues of communication open between the Members of the Senate and the administration. No matter how complicated an issue, he always knew his facts. No matter how controversial an issue, his was always a voice of reason.

Ken's new assignment will return him to a job that is an old love. As a retired Army colonel, he has a deep admiration and respect for our Army. Ken is a sensitive man who told me just the other day that he was disturbed by the way some of our young people regard the military. He is the kind of man who wants to do something to correct this problem. He is the kind of man who wants to make young people aware that a profession in the military is a just and honorable one.

If anyone can do this job it is Ken BeLieu, who has been a straight shooter in this Senate and a trusted friend. I look forward to working with him in his new role as Under Secretary of the Army. I am sure my colleagues join with me in wishing Ken well and in thanking him for his most wonderful assistance.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Under the previous order, the distinguished Senator from West Virginia (Mr. BYRD) is now recognized for 15 minutes.

TV STILL A VAST WASTELAND

Mr. BYRD of West Virginia. Mr. President, over 10 years have passed since Newton N. Minow, in his role as Chairman of the Federal Communications Commission, told the National Association of Broadcasters that television was "a vast wasteland."

America has just endured the first week of television's new offerings, and it appears obvious that Mr. Minow's words ring as true today as they did a decade ago. A full 20 of the 56 prime time hours of our three major networks are occupied by detective shows—blind detectives, fat detectives, private detectives, and detectives upholding the honor of local, State, and Federal governments.

If our streets were as amply patrolled as our prime time TV hours, we could all sleep a lot better at nights.

To be certain, it is not important that an entire generation which is now maturing has never seen Raymond Burr stand up. But I think it is important that Americans are coming to expect nothing better than mediocrity from television—that they are beginning to feel that the best the networks can do is to copy from each other. One network creates "Bonanza," and Americans have only to wait one season before prosperous ranchers settle down on the other two major networks. That kind of programing, Mr. President, can hardly be applauded.

I am aware that television is a hun-

gry medium. The works of some of the finest writers are gobbled up as quickly as they are written, and the creative energies of many writers have been drained trying to keep television well fed. Yet, I am also aware that television is a powerful medium, an important medium, and it is not being used to its full capabilities.

When he was teaching in college, the famed drama critic Walter Kerr developed a number of theories that later went into his book "The Decline of Pleasure." One of those theories was that people preferred TV programs that did not require too much concentration, simply because they usually viewed television in surroundings that invited interruptions.

Someone carrying on a conversation at the movies, for instance, would be very disturbing to other patrons. But when watching television, practically any interruption is acceptable.

In fact, given the TV fare as it is today, practically any interruption is enjoyable.

This does not have to be the case. Most Americans would welcome quality programing. One has only to consider the reaction to "The Six Wives of Henry VIII" to know that. The CBS network and WTOP–TV, which carried the series locally, should be highly commended for presenting it to the public.

Besides winning critical acclaim—which could have been expected, considering what the critics usually have to review—this series also won wide public acclaim. WTOP–TV has reported very favorable comment on the series, and CBS has noted that each of the six segments was viewed by about 20 million Americans—that is a very good summer audience, indeed.

"The Six Wives of Henry VIII" caused many of us to think, not only of Tudor England and of King Henry VIII himself, but also of the fact that American television had to "import" this series from the BBC. I hope that the accolades heaped on this series will convince our three major networks to devote more attention to producing programs of similar quality.

To be sure, educational television does show a number of impressive dramas; but even on NET, much of the drama is "imported," while the dramatic productions tend to reflect the avant garde rather than the classic. "The Six Wives of Henry VIII," for example, will be repeated on WETA–TV, the local NET station, this winter.

It is true that American history had no Henry VIII, but anyone with even a passing knowledge of American history would concede that there is material aplenty, of high dramatic content, which would enliven our TV screens—and not just the screens of persons watching NET, as the audience reaction to "The Six Wives of Henry VIII" will attest. I know we have material in our history to supply the basis for quality television programs, and I am fairly confident that we have people available to write, direct, and produce worthwhile shows. And not just in the field of drama.

Talk shows, for example, are now marked by a sameness that makes watching them more a testament to the viewer's boredom than to the program's content. One network sits the host behind a desk. Another network will place its host in a swivel chair and consider this a meaningful change in programing. Directors for most talk shows seem to think that scheduling commercials for low phosphate detergents during an appearance by an ecologist constitutes a significant contribution to our way of life.

With rare exceptions, guests are scheduled on a shotgun basis—an ecologist is followed by an acid rock band that uses enough electricity to light up a city—and few of the interesting guests are given a sufficient amount of time. There even have been occasions where the main guest on one talk show has been the host of another talk show.

In their early years, these shows often proved to be informative. But the success of the first talk show caused the networks to flood the market and beat the idea to death. All the shows, in my opinion, have deteriorated—"The David Frost Show," for example.

Talk shows could play an important part in television programing, especially since network expenditures for news and public affairs shows declined by $2 million last year. And, in this area also, I believe the resources are available to make these shows important.

The only thing lacking, apparently, is the will on the part of the networks to do the job that has to be done. Perhaps they should be reminded—on a regular basis, if necessary—that the airwaves belong to all the people, and not just to the network advertisers and stockholders.

Mr. President, I am not an avid television viewer. My work schedule will not allow it. But on the few nights I get home during "prime time," and particularly on weekends, I enjoy relaxing in front of the TV set. But most of what there is to be seen makes me eternally grateful to my work for keeping me from watching more than I do.

"The Six Wives of Henry VIII" was a pleasant exception, and the pleasure which this series brought to millions of Americans was articulated in a delightful manner by Mary McGrory in a column that appeared in the Sunday Star on September 5.

I ask unanimous consent that the column be printed in the RECORD.

There being no objection, the column was ordered to be printed in the RECORD, as follows.

HENRY TUDOR WILL BE MISSED

(By Mary McGrory)

He's going to die tonight, and a lot of us are going to miss Henry Tudor. An exemplary character he was not, but week after week, wife after wife, he has come to the homescreen, bringing with him 90 minutes of delicious distraction from the heat, the freeze, the floating yen and the sinking dollar.

How can we thank the BBC enough for "The Six Wives of Henry VIII"? They have given us superlative entertainment that can be enjoyed without guilt. It is, after all, history. It really happened. Knowing how it comes out doesn't spoil the suspense. A man in my office says he kept yelling at Catherine Howard (5) to be careful as she flung her young arms around Master Thomas Culpepper. Another is still brooding over Catherine of Aragon (1). He cannot understand why Henry ever looked elsewhere.

Tudor England couldn't have been a fun period to live in, particularly if you caught Henry's acquisitive eye for one reason or another. But to watch, there's nothing like it. No commissions, committees, cost-of-living councils or marriage counselors. Government was high, individual drama, politics was passion, and the paranoia was real. Henry imagined himself surrounded by traitors and schemers, and he was. His ladies fingered their lovely necks nervously under their jeweled capes, and they had reason.

The Women's Liberation may look upon Henry as the ultimate male chauvinist pig; the BBC has tried to be fair although the going is rough. Henry wanted a male heir, not wholly out of male vanity but for succession to the throne. The penalties for failure were severe, but he was not without charm. He came near to melting the sensible German heart of Anne of Cleves (4), an extremely nice woman—as they all were in their way—and the only one who outlived him.

After such stylish, exquisitely spoken company, it's going to be grim to go back to our usual Sunday night companions, the mumbling cattlerustlers, the cement-lipped hoods, and prattling ingenues. They could fight the Indian wars over again from start to finish and never match this royal battle of the sexes.

We'll have to live with our memories a while. Who could forget those piercing moments when small favors were asked by Henry's discards: Anne Boleyn (2), the baggage become majesty in doom, begging cold-eyed Cranmer for the axe instead of the stake? Or Catherine Howard, the exquisite wanton, who beseeches her black-hearted uncle, the Duke of Norfolk, for a model block so she can rehearse her execution? And what about saintly Jane Seymour (3) and her smile so sweet it caused Aragon's terrified daughter Mary to faint dead away?

No, We'll just have to sit in the dark until next winter and another invitation to court. Six installments of "Elizabeth R" are promised. She was Anne Boleyn's daughter, despised girl-child who was the greatest monarch in English history.

Betimes, it is not quite fair to use "The Six Wives of Henry VIII" as a stick to beat American television over the head. American history just does not provide the material. Democracy tolerates rogues only as mayors. Our high politicians labor under the shadow of the Puritan ethic, which Henry's misbehavior helped bring about; no president would have lasted in office with Henry's record.

Take George Washington, an admirable man. He would not tell a lie—Henry never hesitated for a moment—and there was only Martha, a worthy matron, but she's not a series. The Adamses contributed much to our political life and thought, but they were hopelessly monogamous. Abraham Lincoln was hagridden, it is said, but he was too noble and too sad, and Warren Harding and his house on K Street just won't do after Hampton Court.

Alas, we have chosen to compete in the culture market with James Fenimore Cooper and "The Last of the Mohicans" in eight one-hour segments. It is the dreariest classic ever foisted off on bored school children, the dullest of whom can tell that Cooper wrote with moccasins on his hands. Eight hours of Natty Bumpo, Chingchagook, Alice, Cora and the rest of that wooden company! It will make monarchists of us all.

Mark Twain, who regarded the "Leatherstocking Tales" as the great literary catastrophe of his time, said it perfectly: "Its humor is pathetic, its pathos is funny, its conversa-

tions are—oh, indescribable; its love scenes odious, its English a crime against the language."

"Off with his head," as Henry so often said. We'll wait for Elizabeth.

PERIOD FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period of 15 minutes for the transaction of routine morning business with each Senator limited to 3 minutes. Is there any morning business?

THE ADMINISTRATION'S THREAT TO FREE SPEECH IN THE SENATE

Mr. ERVIN. Mr. President, one of the historical lessons that the American people seem always to have difficulty learning is the truth of the warning enunciated so long ago:

Eternal vigilance is the price of liberty.

We can never rest on the laurels won by our ancestors, nor can we delude ourselves into thinking that our liberties, once having been obtained, are forever secure. Every generation must win for itself the liberties enjoyed by its predecessors.

Thus it was a few weeks ago that we discovered that the freedom of the press from prior restraints is not a timeless right totally immune from question. The Founding Fathers had experience with the tyranny over freedom that results from prior restraints. Out of that experience came the first amendment which, without question, has been understood for almost 200 years to prohibit Government-inspired injunctions against publishing by the press. Yet in the excitement and crisis of the Pentagon papers episode, this understanding was once again questioned by the Justice Department. Out of that controversy has arisen new doubts over whether there are circumstances in which prior restraints are necessary and proper despite the provisions of the first amendment.

The events now transpiring in Boston before a Federal grand jury put into question another principle of freedom secured by our predecessors. Once again, it remains to this generation to secure for itself the liberties won by earlier generations.

I have in mind, of course, the efforts of the administration to inquire into the actions of the junior Senator from Alaska (Mr. GRAVEL) in connection with the revelations of the contents of the Pentagon papers.

As Members may recall, a few months ago the Senator from Alaska convened a subcommittee of which he is chairman and proceeded to read into the committee record the contents of the Pentagon papers. It was, to be sure, a most unusual committee meeting. It came at a time when the Nation was in doubt over whether Congress or the people would ever see the contents of these papers. No one knew whether the administration would be successful in imposing censorship on the press, and whether it would continue to refuse to produce the papers for congressional use, as it had for years. The action of the Senator from Alaska was a demonstration of personal courage. Whether it was foolish, unauthorized, or should be condoned by the Senate is another question. But this is a question for the resolution of the Senate, not by another body.

It is apparent, however, that the administration now seeks to impose its own judgment on the Senator, and to punish him for his actions. A grand jury sitting in Boston is conducting a broad inquiry into how these papers were obtained and released to the press. The Government also seeks, it appears, to inquire into the actions of the Senator from Alaska and the speech he made before his subcommittee. It undoubtedly wants to know how he got his copies of the Pentagon papers. In pursuit of this aim, it has subpenaed the Senator's aide, Dr. Leonard Rodberg, to testify, and even asserted the right to subpena the Senator himself.

The subpena against Dr. Rodberg would not be of concern if his testimony were to be limited to his knowledge of events prior to his association with the Senator, or to his actions unconnected with his relationship with the Senator. To ensure that the grand jury does not seek to inquire into the Senator's speech, or into Dr. Rodberg's assistance to the Senator in making that speech, both the Senator and his aide have sought to have the Justice Department define the scope of the subpena and to quash it if it refused.

Not only has the Justice Department not responded to the opportunity to narrow the scope of its inquiry, but it has asserted a right to inquire into the actions of Dr. Rodberg in assisting the Senator. It has gone even further than that. It has asserted in its brief a power to subpena the Senator himself, and to question him on the details of the speech, how he came to make it, and where he got his information. It has also presumed to question the legality of the Senator's action in calling his subcommittee meeting, and to assert that it has the power to define the proper scope of a subcommittee's concerns and the range of a Senator's proper legislative interests.

In doing these things and making these arguments, the administration, through its lawyers in the Internal Security Division of the Justice Department, has made a direct and broadscale attack on the rights of all Senators, upon the prerogatives of the Senate, and upon the constitutional guarantees which have been established to protect the Congress from harassment by a vindictive Executive. It is an attack on the independence and freedom of this body, just as the attempt to enjoin the New York Times was an attack on the freedoms of the press. Both moves are sponsored by the Internal Security Division of the Justice Department, which is also responsible for the Subversive Activities Control Board order and that extraordinary new principle of "Presidential legislative power."

As Americans know, the drafting of the Constitution was a long and difficult process. Few of its provisions escaped debate, for almost all were controversial. Of these few, there was one which occasioned no debate because the Founding Fathers were in complete agreement. This was the so-called speech and debate clause of article I, section 6. The provision reads as follows:

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of the respective Houses, and in going to and returning from the same; *and for any Speech or Debate in either House, they shall not be questioned in any other Place.*

That last clause is designed to make free from any outside restraint the speech of the representatives of the people when they are in Congress. If the people's interests are to be represented at all, and if the Congress is to be free of outside restraint in what it debates, then Members must be protected from judicial or executive or even private interference based upon speech.

That was succinctly put by James Wilson, an influential member of the Constitutional Convention:

In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence.

This is a right even broader than the first amendment right granted all Americans. There are limited areas where the speech of ordinary citizens can be the subject of judicial or administrative action. In some cases, speech can be used as evidence to show intent or motive or may be an element of a crime. Obscene speech and defamatory speech can be the subject of civil legal action, and speech amounting to advocacy of immediate violations of the criminal law or of national security laws can, if it amounts to incitement to act, be the subject of criminal prosecution.

The freedom of speech of a legislator is subject to no such qualifications. His freedom is absolute. He cannot be sued for defamation in a speech before the Congress. Nor can he be convicted for an ordinary crime, if the proof of that crime requires an inquiry into what he has said as a legislator, why he said it, or who gave him the information. Indeed, a legislator does not even have to defend himself when his speech is brought into question in a judicial forum, because the privilege also protects him from harassment. All he need do is claim the privilege.

This broad immunity naturally can work to the harm of the country or to individual citizens when it is abused. But the privilege exists, nonetheless, because history has shown us the necessity of a broad privilege, and has proved that the harm which comes from occasional abuse is nothing when compared to the harm which would come if the privilege did not exist, or were narrower.

It is to history that we look to find the reasons for this broad privilege, Jus-

tice Frankfurter's summary in the case of *Tenney* v. *Brandhove*, 341 U.S. 367, puts it well:

The privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries. As Parliament achieved increasing independence from the Crown, its statement of the privilege grew stronger. In 1523, Sir Thomas More could make only a tentative claim. Roper, Life of Sir Thomas More, in More's Utopia (Adams ed.) 10. In 1668, after a long and bitter struggle, Parliament finally laid the ghost of Charles I, who had prosecuted Sir John Elliot and others for 'seditious' speeches in Parliament. Proceedings against Sir John Elliot, 3 How. St. Tr., 294, 332. In 1689, the Bill of Rights declared in unequivocal language: "That the Freedom of Speech, and debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament.". . .

Freedom of speech and action in the legislature was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation. It was deemed so essential for representatives of the people that it was written into the Articles of Confederation and later into the Constitution. Article V of the Articles of Confederation is quite close to the English Bill of Rights: 'Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress. . . .' Article I, § 6, of the Constitution provides: '. . . for any Speech or Debate in either House, [the Senators and Representatives] shall not be questioned in any other Place.' 341 US at 372–73.

I ask unanimous consent to have included at the conclusion of my remarks, the case of *Tenney* v. *Brandhove*, 341 U.S. 367 (1950).

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ERVIN. The dimensions of the privilege have been examined in a few Supreme Court cases. Contrary to the statement in the Justice Department's brief, it is a broadly read privilege. The remarks of Chief Justice Parsons of Massachusetts, quoted with approval by Justice Frankfurter in the Tenney case, and cited in other analyses of the privilege, make this clear:

These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution of the office; and I would define the article as securing to every member exemption from prosecution, for everything said or done by him, as a representative in the exercise of the function of that office, without inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules. Quoted at 341 U.S. 373–74.

I note that both Justice Frankfurter and the Justice Department brief refer to identical quotations from Madison and Jefferson. But while the Justice Department reads the quotes as evidence of a narrow construction, Justice Frankfurter in this case, and the Supreme Court each time it has considered the subject, has taken pains to state how broad is the privilege.

It is noteworthy that there are not many cases in which the Supreme Court has discussed the clause, for the privilege has not often been questioned. In two cases, citizens sought to sue for damages for wrongs done them by legislators. They were unsuccessful. In *Kilbourn* v. *Thompson*, 103 U.S. 168, a recalcitrant witness before the House of Representatives was adjudged in contempt and sent to District of Columbia jail. He sued for false imprisonment, contending that the actions of the House were illegal and unconstitutional. The Court agreed that the House of Representatives acted unconstitutionally in seeking to exercise a judicial power not granted to it by the Constitution. But the fact that the House and the Members who had ordered the imprisonment had acted unconstitutionally did not mean that their privilege had been forsaken. As the Supreme Court said in *United States* v. *Johnson*, 383 U.S. 169:

However reprehensible such conduct may be, we believe the Speech or Debate Clause extends at least so far as to prevent it from being made the basis of a criminal charge against a member of Congress of conspiracy to defraud the United States by impeding the due discharge of government functions. 383 U.S. at 180.

I ask unanimous consent that the cases of *Kilbourn* v. *Thompson*, 103 U.S. 168 (1880), and *United States* v. *Johnson*, 383 U.S. 169 (1965) be inserted at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibits 2 and 3.)

Mr. ERVIN. Mr. President, in the Tenney case I have already mentioned, the privilege as it applied to State legislators was upheld even as against a suit based upon the Federal statute authorizing damage suits for violations of citizen's constitutional rights. The case was based upon efforts to silence a critic of the California Senate Factfinding Committee on Un-American Activities. The plaintiff, who had been hauled before the committee in an obvious effort to harass and discredit him, sued on the grounds that this was a violation of his freedom of speech under the first amendment. The Court had no sympathy with the actions or motives of the committee, but it said that the motives or intent of the committee were not subject to judicial scrutiny:

The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in *Fletcher* v. *Peck*, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, had remained unquestioned. 341. U.S. at 377.

The privilege, as I have said, bars even an inquiry into speech when it is the core of a felony charge against the legislator. In United States against Johnson, it was alleged that a Congressman had accepted a bribe to give a speech and to do other things to help protect savings and loan institutions then under investigation. The court threw out any inquiry into the speech, how it was prepared, the motives for giving it, and where the information in it had come from. No inquiry which is dependent upon the speech itself can survive against the privilege. Despite the nature of the crime—and bribery of a legislator is the worst perversion of his office and his public trust—the privilege protects against inquiry.

While the privilege often protects legislators against civil suits, and sometimes results in venal legislators escaping justice, its central purpose is to protect legislators from retribution by the executive branch.

Justice Harlan said in Johnson:

[I]t is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits such as those in *Kilbourn* and *Tenney*, but rather to prevent intimidation by the Executive and accountability before a possibly hostile judiciary. 383 U.S. at 180–181.

The privilege protects legislators not only from prosecution by the Executive and from the judiciary. Quite obviously it also protects them from instrumentalities such as the grand jury, which can be used as the Executive's instrument of harassment and persecution.

It must be stressed that the privilege does more than immunize the legislator against attempts to punish him or to exact retribution for the things he says in the course of performing his legislative duties. The privilege also protects him against having to defend or justify or explain what he has said. The privilege seeks to free the legislator from being harassed by law suits, grand juries, and prosecutors. Were this not so, the independence of the legislator might just as well be destroyed by forcing him to defend himself all over the country.

It was not only fear of the Executive that caused concern in Parliament but of the judiciary as well, for the judges were often lackeys of the Stuart monarchs, levying punishment more to the wishes of the crown than to the gravity of the offence . . . There is little doubt that the instigation of criminal charges against critical or disfavored legislatures by the Executive in a judicial forum was the chief fear prompting the long struggle for parliamentary privilege in England and, in the context, of the American system of separation of powers, is the predominate thrust of the Speech or Debate Clause. 383 U.S. at 181–182.

And, as Chief Justice Warren said in *Powell* v. *McCormack*, 395 U.S. 486:

[T]he clause not only provides a defense on the merits but also protects a legislator from the burden of defending himself.

Our cases make it clear that the legislative immunity created by the Speech or Debate Clause performs an important function in representative government. It insures that legislators are free to represent the interests of their constituents without fear that they

will be later called to task in the courts for the representation. 395 U.S. at 502–503.

I ask that excerpts of the case of Powell against McCormack dealing with the speech or debate clause be printed at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 4.)

Mr. ERVIN. Mr. President, there is another reason why the privilege against inquiry into a speech does not depend on the legality or constitutionality of the act to which it is tied. That is because the privilege seeks to avoid any abridgment of the freedom of a legislator, even from fear of future retribution. If a legislator knew that he had to account for the possibility that he would have to defend or justify his speech sometime in the future, then he would not be as willing to express himself on controversial matters.

This privilege, like the first amendment, is not solely for the courageous. It is for the timid as well. And I dare say there are few legislators who would be courageous against the determined onslaughts of a vindictive Executive or a hostile judiciary.

It is against this law and this history that we must evaluate the assertions of the administration that it has the power to inquire into the speech of the Senator from Alaska, that it can determine whether the subject matter of the speech was within the jurisdiction of the committee, whether the committee meeting was timely, proper, and in order, and whether the Senator himself can be called to testify.

First, it is clear that the legality of the Senator's action cannot be put in question. Even if a law has been broken by his speech, that could not justify an examination into its background or contents. The cases are clear that, as in Johnson, neither the speech nor its motives nor its origins can be the subject of a criminal prosecution nor used as an element of its proof, nor even as evidence against him.

Nor can the question of whether the subcommittee was properly called affect the privilege. If the constitutionality of legislative action does not affect the privilege, as it did not in Kilbourn, nor the real motive, as it did not in Brandhove, then how can the fact that the formalities of times, meetings, notices, and the like, affect it. To make the existence of the privilege turn on technical matters such as that would reduce it to a petty quibble.

The Supreme Court made clear in Tenney that it will inquire no further than to assure itself that—

> The legislative committee [was] acting in a field where legislators have power to act. 341 U.S. at 379.

In Tenney, the privilege was upheld to protect a committee trying to silence a critic. Here the Government seeks to silence a critic in the legislature, and to destroy the privilege at the same time. The last part of the statement of Justice Parson's question by Justice Frankfurter is the complete answer to the Department's claim:

> I would define the article as securing to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules.

In other words, if the act in question is a "legitimate legislative activity"—if it relates to legislative concerns—then it is "absolutely privileged." As the Justice Department itself argued so well in its brief in the Dombrowski case:

> The test is simply whether the act is such as is "generally done in a session of the House by one of its members in relation to the business before it" (*Kilbourn v. Thompson, supra*, at 204) or whether the legislators "were acting in a field where legislators traditionally have power to act" (*Tenney v. Bradhove, supra*, at 379). A legislator loses immunity only for conduct "that is in no wise related to the due functioning of the legislative process." *United States v. Johnson, supra*, at 172. (Government brief in the Supreme Court pp. 31–32)

An analogous situation was presented in the case of *Cochran* v. *Couzens*, 42 F. 2d 783 (1930), decided by the U.S. Court of Appeals for the District of Columbia. There, Senator James Couzens of Michigan was sued for slander on the basis of remarks made in a speech on the Senate floor, but not during any debate. The court repeated the statement of Lord Denman in *Stockdale* v. *Honsard*, 9 Ad & E 1, which had been cited in Kilbourn:

> Whatever is done within the walls of either assembly must pass without question in any other place.

In rejecting the claim, the Court said that—

> The words forming the basis of (Cochran's) action were uttered in the course of a speech in the chamber of the Senate of the United States, and were absolutely privileged and not subject to "be questioned in any other place." The averment that the words were spoken "unofficially and not in the discharge of his official duties as a Senator"—

Words almost identical to those used by the Justice Department in referring to Senator GRAVEL's speech at the subcommittee hearing—

> Is a mere conclusion and utterly qualified by the averment that they were offered in the course of a speech. 42 F. 2d at 784.

I ask that the case of *Cochran* v. *Couzens*, 42 F. 2d 783 and the Dombrowski case be printed at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibits Nos. 5 and 6.)

Mr. ERVIN. The short of it is, as Lord Chief Justice Coleridge said in 1884, is that—

> What is said or done within the walls of Parliament cannot be inquired into in a court of law. *Bradlaugh* v. *Gossett*, 12 Q.B.D. 271 at 275.

More serious than the claim that the privilege depends on the technical propriety of the calling of the hearing is the assertion that the privilege does not exist because the speech was not concerned with public works and buildings. In the words of the Justice Department brief in opposition to Senator GRAVEL'S motion:

> The reading of the paper in question can have no possible relationship to the legislative business with which Senator Gravel has sought to cloak himself. Not being engaged in official subcommittee business, Senator Gravel's actions cannot be above scrutiny by those charged to enforce the criminal statutes. (Pages 10–11.)

By so asserting the administration claims a power to define the proper scope of committee testimony and Senate speeches. This it cannot do. It is clear that infringement of a citizen's first amendment rights and intimidation of legislative critics is not within the proper scope of a committee's jurisdiction, yet the court in Tenney ruled that that could not affect the privilege. Nor can the House of Representatives, as in Kilbourn, constitutionally adjudge contempt. Certainly it is not within the proper scope and authority of a Congressman to make floor speeches for pay—Johnson. Yet, despite the fact that unconstitutional or venal conduct was involved in these cases, the Supreme Court has ruled that the speech and debate privilege remains unaffected.

Of course, the administration is really arguing that it may tell a Senator when and where and in what manner, and with what information, he may discuss the war in Vietnam. The administration would say that Senators must only comment on issues germane to a committee meeting, as it would determine germane. If the germaneness rule applies, that means that the Government or a private person can peruse committee transcripts, seeking to find remarks not within the scope of the subject of the hearing. Congressmen and Senators will have to watch what they say lest it be claimed that it is not germane, and so opens them up to harassment, law suits, and prosecutions. Legislators will spend all their days arguing the germaneness of their speeches before judges and juries, with courts and prosecutors refereeing congressional debates. Surely that is not what the privilege means and the cases I have referred to remove any doubt on that score.

The administration's motives in pressing this action are not only aimed at the privilege, but at a Senator who dared oppose it on the war, and who had the effrontery to use information the administration desired to keep from the people. If the administration were to have its way, we must remain in total ignorance of what has transpired in Vietnam, and anything else the Government does, unless it chooses to tell us. By suppressing this information, the executive branch has tried to keep the Congress and the Nation in total ignorance. Now it tries to dictate what the scope of a Senator's business is, and where and when and how he may conduct it.

The tendency, if not the intent, of this effort is to harass the Senator from Alaska, and thereby to silence him and other critics in this body along with those who are outside these halls. This action is of a pattern we have seen recently. The private citizen must fear the Army spies and the Subversive Activities Con-

trol Board which will retaliate against administration critics; the press must fear injunctions and treason charges should it publish facts which are secret only because they are embarrassing; and now Senators must face subpenas of themselves and their aides. Even officials within the administration are threatened with the insult of the lie-detector if unkind or critical information leaks out.

The administration is not slow to assert its own privileges, even when they do not exist, and even when the claim interferes with the responsibilities of this body under the Constitution.

They will not produce Army generals to testify about Army surveillance.

They will not produce Dr. Kissinger to testify about foreign policy.

They will not produce State Department plans which explain our foreign aid policy.

They will not tell us what the standards are for putting a citizen into an internal security computer.

The affairs of the executive branch are hidden from the scrutiny of the Congress and the American people. What they do is sacrosanct and immune from criticism. But if a Senator should dare to offend those in power by disclosing to the American people information improperly kept secret by the executive branch, then it claims the right to haul him before the grand jury and make him testify. Should this prove the case, the logical next step would be to assert a right to prosecute the Senator for making the speech, on the grounds that it contained stolen information.

The immediate issue before the court in Boston is whether the Government can subpena the aide of the Senator from Alaska to testify about his relations with the Senator in regard to that speech. There is no question, from reading the cases, that the privilege of a Senator is broader than that of his aide. Yet the privilege clearly does apply to aides of Senators when they are acting under the authority and direction of a Senator and are assisting him in one of his functions. The privilege ends at the point where the aide carries out actions pursuant to decisions of the legislature or a Senator and those actions are illegal. He is responsible for those illegal acts. But to the extent that he assists the Senator in the Senator's functions, he is protected even if the Senator, were he not in office, would be subject to prosecution.

Thus, one may not question how the Congress came to imprison falsely a citizen, but one may punish, or hold civilly liable, the legislative employee who actually accomplished the false imprisonment. One may not question a speech done for a bribe, but one could punish an employee for transmitting the money, just as one can punish the Congressmen for accepting the money:

> The purpose of the protection afforded legislators is not to forestall judicial review of legislative action but to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions. A legislator is no more or no less hindered or distracted by litigation against a legislative employee calling into question the employee's *affirmative action* than he would be by a lawsuit questioning the employee's failure to act. *Powell* v. *McCormack* 395 U.S. at 505.

When considering the immunity of the aide of a legislator, the line must be drawn at least at the point where he no longer helps his superior in the performance of his superior's privileged acts but acts affirmatively on his own to execute or implement the unconstitutional or illegal order of the legislator.

Certainly, the Executive cannot inquire of an aide those things which cannot be inquired directly of a legislator. The Government cannot do by indirection what it is prohibited from doing directly. The Government cannot ask Dr. Rodberg how the Senator came to give that speech any more than it can ask the Senator himself. The protection of the aide is necessary to preserve the Senator's privilege.

Not only does the privilege serve to protect the Senator from efforts of the Government to question his speech by indirection, but it also serves to prevent the executive branch from acting so as to cut off the Senator from the assistance of his aides. To isolate a Senator so that he cannot call upon the advice, counsel, and knowledge of his personal assistants is to reduce him to impotency. If an aide must fear that the advice he offers, the knowledge he has, and the assistance he gives to his superior may be called into question by the Government, then he will refrain from doing so on those very occasions which are the most controversial and in which the Senator is in most need of counsel. If the aide must fear that a vindictive executive or hostile judiciary will seek to strike at him because it cannot reach his Senator, then the aide will not be able to give his best service to his superior. And the Senator will never be certain whether the advice he gets is the product of the best judgment of his assistants, or merely the product of their caution and fear. In order to protect the Senator from any interference from the counsel he can get from his assistants, the Government cannot delve into what passes between them.

This is the same privilege that the administration so broadly claims for itself. It seeks to protect the advisers of the President by preventing Congress from questioning that advice. When properly claimed, that is within the scope of "executive privilege." No less a privilege exists with respect to the aides of Senators, and for the same reasons.

It is noteworthy that the same administration which seeks to broaden "executive privilege" so that it appears to be coextensive with executive reluctance to discuss the embarrassing, now seeks to deprive a Senator of the equivalent "legislative privilege."

In resolving where to draw the limits of the protective mantle that a legislator's privilege places on his aide, we must recall again the ultimate purpose of the speech and debate immunity provision:

> It is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits such as those in *Kilbourn* and *Tenney*, but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary, 383 U.S. at 180—1 *U.C.* v. *Johnson*.

The purpose of the privilege is to protect the legislative branch from a vindictive executive and a hostile judiciary. It is an element of the principle of separation of powers. For that reason, different considerations apply when we are determining how much a legislative aide is cloaked with his superior's immunity. In the three cases in which legislative employees were held not to have the immunity of their superiors, private rights were involved. In Kilbourn, it was a civil suit for false imprisonment. In Dombrowski it was for damages for an illegal search and seizure. In Powell, it was for damages and other relief by an excluded Representative, Adam Clayton Powell. None of these cases represented a clash between the Executive and the Congress.

Here, that is precisely the case. Ultimately, I suppose the question of a criminal action may be involved. But the prosecution will be to protect the special interests of the Executive in its efforts to keep its secrets from the Congress and the people. The motive, of course, is to suppress opposition to Executive policy in the Congress and in the country.

When the speech and debate clause is involved in a clash between the executive and the legislative, the history of this legislative immunity is especially important. The immunity was finally gained only after Charles I had lost his head. And he lost his head in part at least because he imprisoned members of Parliament who had opposed him in needless and costly overseas wars, even to the extent of presuming to vote to deny him funds for the war. The establishment of the legislative privilege came during the fight by the legislature to establish its independence from a king who claimed total power.

The historical precedents are too close to be ignored. We see history repeating itself, even down to the Senator's vote on the Hatfield-McGovern amendment. In such circumstances, a Senator's aide must be given the same immunity as that of his superior, otherwise the immunity of the Senate is stripped of value.

Mr. President, the past actions of the administration raise considerable doubts regarding its appreciation of the constitutional rights of Americans. They suggest that the administration does not understand that there are limits to its powers, that other branches of Government and other institutions have rights which the executive branch cannot violate.

There is growing evidence that the administration cannot tolerate criticism. Many citizens already fear it will act against its critics, to prevent them from speaking if it can, and to punish them thereafter if necessary.

The action taken against the Senator from Alaska, by the subpena of his aide and the threats against the Senator himself, adds to these fears and suspicions, just as the attempt to secure injunction against the press added to them earlier in the summer.

The courts uniformly held that the administration had no case against the newspapers. I am confident that the ad-

ministration will get no further in its efforts to silence its senatorial critics. The cases and the history I have cited show that they do not even have a whisper of an argument to support this latest attempt to suppress free speech.

Members of this body, however, cannot rest silent while leaving to the courts the protection of the Senate's prerogatives. An attack against any Member is an attack against the entire body. The rights which we have are not ours merely by inheritance. They must be fought for and jealously defended against every effort to weaken them.

I hope that the events of this summer have alerted Senators and all Americans to the threats which face our freedoms. I hope that Senators and all Americans will speak out to defend our liberties should the administration persist in its course.

EXHIBIT 1

TENNEY ET AL. *v.* BRANDHOVE

(Certiorari to the United States Court of Appeals for the Ninth Circuit—No. 338. Argued March 1, 1951.—Decided May 21, 1951)

Respondent sued petitioners in the Federal District Court for damages under 8 U.S.C. §§ 43 and 47 (3), alleging that, in connection with an investigation by a committee of the California Legislature, he had been deprived of rights guaranteed by the Federal Constitution. Petitioners are the committee and the members thereof, all of whom are members of the legislature. *Held:* From the allegations of the complaint, it appears that petitioners were acting in a field where legislators traditionally have power to act; and 8 U.S.C. §§ 43 and 47 (3) do not create civil liability for such conduct. Pp. 369–379.

(a) The privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has been carefully preserved in the formation of our State and National Governments. Pp. 372–375.

(b) By 8 U.S.C. §§ 43 and 47 (3), Congress did not intend to limit this privilege by subjecting legislators to civil liability for acts done within the sphere of legislative activity. P. 376.

(c) The privilege is not destroyed by a claim that the motives of the legislators were improper. P. 377.

(d) In order to find that a legislative committee's investigation has exceeded the bounds of legislative power, it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive. P. 378.

(e) Legislative privilege deserves greater respect in a case in which the defendants are members of the legislature than where an official acting on behalf of the legislature is sued or where the legislature seeks the affirmative aid of the courts to assert a privilege. P. 379.

183 F. 2d 121, reversed.

In an action brought by respondent against petitioners under 8 U.S.C. §§ 43 and 47 (3), the District Court dismissed the complaint. The Court of Appeals reversed. 183 F. 2d 121. This Court granted certiorari. 340 U.S. 903. *Reversed,* p. 379.

COUNSEL FOR PARTIES

Harold C. Faulkner argued the cause for petitioners. With him on the brief were *Edmund G. Brown,* Attorney General of California, *Bert W. Levit,* Chief Deputy Attorney General, *Ralph N. Kleps* and *A. C. Morrison.*

Martin J. Jarvis and *Richard O. Graw* argued the case for respondent. With them on the brief was *George Olshausen.*

Briefs in support of petitioners were filed as *amici curiae* as follows: A joint brief for the States of Florida, by *Richard W. Ervin,* Attorney General; Georgia, by *Eugene Cook,* Attorney General; Idaho, by *Robert E. Smylie,* Attorney General; Iowa, by *Robert L. Larson,* Attorney General; Kansas, by *Harold R. Fatzer,* Attorney General; Kentucky, by *A. E. Funk,* Attorney General; Maine, by *Alexander A. LaFleur,* Attorney General; Maryland, by *Hall Hammond,* Attorney General; Michigan, by *Frank G. Millard,* Attorney General, *Edmund E. Shepherd,* Solicitor General, and *Daniel J. O'Hara,* Assistant Attorney General; Nevada, by *W. T. Mathews,* Attorney General; New York, by *Nathaniel L. Goldstein,* Attorney General; North Carolina, by *Harry McMullan,* Attorney General; North Dakota, by *Elmo T. Christianson,* Attorney General; Ohio, by *C. William O'Neill,* Attorney General; Oregon, by *George Neuner,* Attorney General; Rhode Island, by *William E. Powers,* Attorney General; South Carolina, by *T. C. Callison,* Attorney General; Tennessee, by *Roy H. Beeler,* Attorney General; Texas, by *Price Daniel,* Attorney General, and *E. Jacobson,* Assistant Attorney General; Virginia, by *J. Lindsay Almond, Jr.,* Attorney General; Washington, by *Smith Troy,* Attorney General; Wisconsin, by *Vernon W. Thomson,* Attorney General; and Wyoming, by *Harry S. Harnsberger,* Attorney General; and a brief for the State of Wisconsin, by *Vernon W. Thomson,* Attorney General, and *Harold H. Persons* and *Roy G. Tulane,* Assistant Attorneys General.

OPINION OF THE COURT

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

William Brandhove brought this action in the United States District Court for the Northern District of California, alleging that he had been deprived of rights guaranteed by the Federal Constitution. The defendants are Jack B. Tenney and other members of a committee of the California Legislature, the Senate Fact-Finding Committee on Un-American Activities, colloquially known as the Tenney Committee. Also named as defendants are the Committee and Elmer E. Robinson, Mayor of San Francisco.

The action is based on §§ 43 and 47(3) of Title 8 of the United States Code. These sections derive from one of the statutes, passed in 1871, aimed at enforcing the Fourteenth Amendment. Act of April 20, 1871, c. 22, §§ 1, 2, 17 Stat. 13. Section 43 provides:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the parties injured in an action at law, suit in equity, or other proper proceeding for redress." R.S. § 1979, 8 U.S.C. § 43.

Section 47(3) provides a civil remedy against "two or more persons" who may conspire to deprive another of constitutional rights, as therein defined.[1]

Reduced to its legal essentials, the complaint shows these facts. The Tenney Committee was constituted by a resolution of the California Senate on June 20, 1957. On January 28, 1949, Brandhove circulated a petition among members of the State Legislature. He alleges that it was circulated in order to persuade the Legislature not to appropriate further funds for the Committee. The petition charged that the Committee had used Brandhove as a tool in order "to smear Congressman Franck R. Havenner as a 'Red' when he was a candidate for Mayor of San Francisco in 1947; and that the Republican machine in San Francisco and the campaign management of Elmer E. Robinson, Franck Havenner's opponent, conspired with the Tenney Committee to this end." In view of the conflict between this petition and evidence previously given by Brandhove, the Committee asked local prosecuting officials to institute criminal proceedings against him. The Committee also summoned Brandhove to appear before them at a hearing held on January 29. Testimony was there taken from the Mayor of San Francisco, allegedly a member of the conspiracy. The plaintiff appeared with counsel, but refused to give testimony. For this, he was prosecuted for contempt in the State courts. Upon the jury's failure to return a verdict this prosecution was dropped. After Brandhove refused to testify, the Chairman quoted testimony given by Brandhove at prior hearings. The Chairman also read into the record a statement concerning an alleged criminal record of Brandhove, a newspaper article denying the truth of his charges, and a denial by the Committee's counsel—who was absent—that Brandhove's charges were true.

Brandhove alleges that the January 29 hearing "was not held for a legislative purpose," but was designed "to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances, and also to deprive him of the equal protection of the laws, due process of law, and of the enjoyment of equal privileges and immunities as a citizen of the United States under the law, and so did intimidate, silence, deter, and prevent and deprive plaintiff." Damages of $10,000 were asked "for legal counsel, traveling, hotel accommodations, and other matters pertaining and necessary to his defense" in the contempt proceeding arising out of the Committee hearings. The plaintiff also asked for punitive damages.

The action was dismissed without opinion by the District Judge. The Court of Appeals for the Ninth Circuit held, however, that the complaint stated a cause of action against the Committee and its members. 183 F. 2d 121.[2] We brought the case here because important issues are raised concerning the rights of individuals and the power of State legislatures. 340 U.S. 903.

We are again faced with the Reconstruction legislation which caused the Court such concern in *Screws* v. *United States,* 325 U.S. 91, and in the *Williams* cases decided this term, *ante,* pp. 70, 97. But this time we do not have to wrestle with far-reaching questions of constitutionality or even of construction. We think it is clear that the legislation on which this action is founded does not impose liability on the facts before us, once they are related to the presuppositions of our political history.

The privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries. As Parliament achieved increasing independence from the Crown, its statement of the privilege grew stronger. In 1523, Sir Thomas More could make only a tentative claim. Roper, Life of Sir Thomas More, in More's Utopia (Adams ed.) 10. In 1668, after a long and bitter struggle, Parliament finally laid the ghost of Charles I, who had prosecuted Sir John Elliot and others for "seditious" speeches in Parliament. Proceedings against Sir John Elliot, 3 How. St. Tr., 294, 332. In 1689, the Bill of Rights declared in unequivocal language: "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 Wm. & Mary, Sess. 2, c. II. See *Stockdale* v. *Hansard,* 9 Ad. & El. 1, 113–114 (1839).

Freedom of speech and action in the legislature was taken as a matter of course by those who severed the Colonies from the Crown and founded our Nation. It was deemed so essential for representatives of

Footnotes at end of article.

the people that it was written into the Articles of Confederation and later into the Constitution. Article V of the Articles of Confederation is quite close to the English Bill of Rights: "Freedom of speech and debate in Congress shall not be impeached or questioned in any court or place out of Congress. . . ." Article I, § 6, of the Constitution provides: ". . . for any Speech or Debate in either House, [the Senators and Representatives] shall not be questioned in any other place."

The reason for the privilege is clear. It was well summarized by James Wilson, an influential member of the Committee of Detail which was responsible for the provision in the Federal Constitution. "In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offence." II Works of James Wilson (Andrews ed. 1896) 38. See the statement of the reason for the privilege in the Report from the Select Committee on the Official Secrets Acts (House of Commons, 1939) xiv.

The provision in the United States Constitution was a reflection of political principles already firmly established in the States. Three State Constitutions adopted before the Federal Constitution specifically protected the privilege. The Maryland Declaration of Rights, Nov. 3, 1776, provided: "That freedom of speech, and debates or proceedings, in the legislature, ought not to be impeached in any other court or judicature." Art. VIII. The Massachusetts Constitution of 1780 provided: "The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever." Part The First, Art. XXI. Chief Justice Parsons gave the following gloss to this provisions in *Coffin* v. *Coffin* 4, Mass. 1, 27 (1808):

"These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal. I therefore think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate; but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature, and in the execution, of the office; and I would define the article as securing to every member exemption from prosecution, for every thing said or done by him, as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular according to the rules of the house, or irregular and against their rules."

The New Hampshire Constitution of 1784 provided: "The freedom of deliberation, speech, and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any action, complaint, or prosecution, in any other court or place whatsoever." Part I, Art. XXX.[3]

It is significant that legislative freedom was so carefully protected by constitutional framers at a time when even Jefferson expressed fear of legislative excess.[4] For the loyalist executive and judiciary had been deposed, and the legislature was supreme in most States during and after the Revolution. "The legislative department is every where extending the sphere of its activity, and drawing all power into its impetuous vortex." Madison, The Federalist, No. XLVIII.

As other States joined the Union or revised their Constitutions, they took great care to preserve the principle that the legislature must be free to speak and act without fear of criminal and civil liability. Forty-one of the forty-eight States now have specific provisions in their Constitutions protecting the privilege.[5]

* * * * *

The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrents to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in *Fletcher* v. *Peck*, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned. See cases cited in *Arizona* v. *California*, 283, U.S. 423, 455.

Investigations, whether by standing or special committees, are an established part of representative government.[6] Legislative committees have been charged with losing sight of their duty of disinterestedness. In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed.[7] Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses. The courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province. To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive. The present case does not present such a situation. Brandhove indicated that evidence previously given by him to the committee was false, and he raised serious charges concerning the work of a committee investigating a problem within legislative concern. The Committee was entitled to assert a right to call the plaintiff before it and examine him.

It should be noted that this is a case in which the defendants are members of a legislature. Legislative privilege in such a case deserves greater respect than where an official acting on behalf of the legislature is sued or the legislature seeks the affirmative aid of the courts to assert a privilege. In *Kilbourn* v. *Thompson*, *supra*, this Court allowed a judgment against the Sergeant-at-Arms, but found that one could not be entered against the defendant members of the House.

We have only considered the scope of the privilege as applied to the facts of the present case. As Mr. Justice Miller said in the *Kilbourn* case: "It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible." 103 U.S. at 204. We conclude only that here the individual defendants and the legislative committee were acting in a field where legislators traditionally have power to act, and that the statute of 1871 does not create civil liability for such conduct.

The judgment of the Court of Appeals is reversed and that of the District Court affirmed.

Reversed.

FOOTNOTES

[1] R.S. § 1980 (par. Third), 8 U.S.C. § 47(3): "If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

[2] The Court of Appeals affirmed the dismissal as to Robinson on the ground that he was not acting under color of law and that the complaint did not show him to be a member of a conspiracy. We have denied a petition to review this decision. 341 U.S. 936.

[3] In two State Constitutions of 1776, the privilege was protected by general provisions preserving English law. See S.C. Const., 1776, Art. VII; N.J. Const., 1776, Art. XXII. Compare N.C. Const., 1776, § XLV.

Three other of the original States made specific provision to protect legislative freedom immediately after the Federal Constitution was adopted. See Pa. Const., 1790, Art. I, § 17; Ga. Const., 1789, Art I, § 14; Del. Const., 1792, Art. II, § 11. Connecticut and Rhode Island so provided in the first constitutions enacted to replace their uncodified organic law. Conn. Const., 1818, Art. Third, § 10; R. I. Const., 1842, Art. IV, § 5.

In New York, the Bill of Rights passed by the legislature on January 26, 1787, provided: "That the freedom of speech and debates, and proceedings in the senate and assembly, shall not be impeached or questioned in any court or place out of the senate or assembly." In Virginia, as well as in the other colonies, the assemblies had built up a strong tradition of legislative privilege long before the Revolution. See Clarke, Parliamentary Privilege in the American Colonies (1943), *passim*, especially 70 and 93 *et seq.*

[4] See Jefferson, Notes on the State of Virginia (3d Am. ed. 1801), 174–175. The Notes were written in 1781. See also, a letter from Jefferson to Madison, March 15, 1789, to be published in a forthcoming volume of The Papers of Thomas Jefferson (Boyd ed.): "The tyranny of the legislatures is the most formidable dread at present, and will be for long years." As to political currents at the time the United States Constitution and the State Constitutions were formulated, see Corwin, The Progress of Constitutional Theory between the Declaration of Independence and the Meeting of the Philadelphia Convention, 30 Am. Hist. Rev. 511 (1925).

[5] Ala. Const., Art. IV, § 56; Ariz. Const., Art., IV, 2, § 7; Ark. Const., Art., V, § 15; Colo. Const., Art. V, § 16; Conn. Const., Art. Third, § 10; Del. Const., Art. II, § 13; Ga. Const., Art. III, § VII, par. III; Idaho Const., Art. III, § 7; Ill. Const. Art. IV, § 14; Ind. Const., Art. 4, § 8; Kan. Const., Art. 2, § 22; Ky. Const., § 43; La. Const., Art. III, § 13; Me. Const., Art. IV, Pt. Third, § 8; Md. D. R. 10, Const., Art. III, § 18; Mass. Const., Pt. First, Art. 21; Mich.

Const., Art. V, § 8; Minn. Const., Art. IV, § 8; Mo. Const., Art. III, § 19; Mont. Const., Art, § 15; Neb. Const., Art. III, § 26; N.H. Const. . . .

[6] See Wilson, Congressional Government (1885), 303: "It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served; and unless Congress both scrutinize these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function."

[7] See Dilliard, Congressional Investigations: The Role of the Press, 18 U. of Chi. L. Rev. 585.

MR. JUSTICE BLACK, CONCURRING

The Court holds that the Civil Rights statutes[1] were not intended to make legislators personally liable for damages to a witness injured by a committee exercising legislative power. This result is reached by reference to the long-standing and wise tradition that legislators are immune from legal responsibility for their intra-legislative statements and activities. The Court's opinion also points out that *Kilbourn* v. *Thompson*, 103 U.S. 168, held legislative immunity to have some limits. And today's decision indicates that there is a point at which a legislator's conduct so far exceeds the bounds of legislative power that he may be held personally liable in a suit brought under the Civil Rights Act. I substantially agree with the Court's reasoning and its conclusion. But since this is a difficult case for me, I think it important to emphasize what we do *not* decide.

It is not held that the validity of legislative action is coextensive with the personal immunity of the legislators. That is to say, the holding that the chairman and the other members of his Committee cannot be sued in this case is not a holding that their alleged persecution of Brandhove is legal conduct. Indeed, as I understand the decision, there is still much room for challenge to the Committee action. Thus, for example, in any proceeding instituted by the Tenney Committee to fine or imprison Brandhove on perjury, contempt or other charges, he would certainly be able to defend himself on the ground that the resolution creating the Committee or the Committee's actions under it were unconstitutional and void. In this connection it is not out of place to observe that the resolution creating the Committee is so broadly drawn that grave doubts are raised as to whether the Committee could constitutionally exercise all the powers purportedly bestowed on it.[2] In part the resolution directs the Committee "to ascertain . . . all facts relating to the activities of persons and groups known or suspected to be dominated or controlled by a foreign power, and who owe allegiance thereto because of religious, racial, political, ideological, philosophical, or other ties, including but not limited to the influence upon all such persons and groups of education, economic circumstances, social positions, fraternal and casual associations, living standards, race, religion, political, ancestry and the activities of paid provocation . . . ."Cal. Senate Resolution 75, June 20, 1947.

Of course the Court does not in any way sanction a legislative inquisition of the type apparently authorized by this resolution.

Unfortunately, it is true that legislative assemblies born to defend the liberty of the people, have at times violated their sacred trusts and become the instruments of oppression. Many specific instances could be cited but perhaps the most recent spectacular illustration is the use of a committee of the Argentine Congress as the instrument to strangle the independent newspaper *La Prensa* because of the views it espoused.[3] In light of this Argentine experience, it does not seem inappropriate to point out that the right of every person in this country to have his say, however unorthodox or unpopular he or his opinions may be, is guaranteed by the same constitutional amendments that protects the free press. Those who cherish freedom of the press here would do well to remember that this freedom cannot long survive the legislative snuffing out of freedom to believe and freedom to speak.

MR. JUSTICE DOUGLAS, DISSENTING

I agree with the opinion of the Court as a statement of general principles governing the liability of legislative committees and members of the legislatures. But I do not agree that all abuses of legislative committees are solely for the legislative body to police.

We are dealing here with a right protected by the Constitution—the right of free speech. The charge seems strained and difficult to sustain; but it is that a legislative committee brought the weight of its authority down on respondent for exercising his right of free speech. Reprisal for speaking is as much an abridgment as a prior restraint. If a committee departs so far from its domain to deprive a citizen of a right protected by the Constitution, I can think of no reason why it should be immune. Yet that is the extent of the liability sought to be imposed on petitioners under 8 U.S.C. § 43.[4]

It is speech and debate in the legislative department which our consitutional scheme makes privileged. Included, of course, are the actions of legislative committees that are authorized to conduct hearings or make investigations so as to lay the foundation for legislative action. But we are apparently holding today that the actions of those committees have no limits in the eyes of the law. May they depart with impunity from their legislative functions, sit as kangaroo courts, and try men for their loyalty and their political beliefs? May they substitute trial before committees for trial before juries? May they sit as a board of censors over industry, prepare their blacklists of citizens, and issue pronouncements as devastating as any bill of attainder?

No other public official has complete immunity for his actions. Even a policeman who exacts a confession by force and violence can be held criminally liable under the Civil Rights Act, as we ruled only the other day in *Williams* v. *United States*, 341 U.S. 97. Yet now we hold that no matter the extremes to which a legislative committee may go it is not answerable to an injured party under the civil rights legislation. That result is the necessary consequence of our ruling since the test of the statute, so far as material here, is whether a constitutional right has been impaired, not whether the domain of the committee was traditional. It is one thing to give great leeway to the legislative right of speech, debate, and investigation. But when a committee perverts its power, brings down on an individual the whole weight of government for an illegal or corrupt purpose, the reason for the immunity ends. It was indeed the purpose of this civil rights legislation to secure federal rights against invasion by officers and agents of the states. I see no reason why any officer of government should be higher than the Constitution from which all rights and privileges of an office obtain.

EXHIBIT 2

KILBOURN *v.* THOMPSON, 103 U.S. 168 (1880)

MR. JUSTICE MILLER, after stating the case, delivered the opinion of the court.

The argument before us has assumed a very wide range, and includes the discussion of almost every suggestion that can well be conceived on the subject. The two extremes of the controversy are, the proposition on the part of the plaintiff, that the House of Representatives has no power whatever to punish for a contempt of its authority; and on the part of defendants, that such power undoubtedly exists, and when that body has formally exercised it, it must be presumed that it was rightfully exercised.

This latter proposition assumes the form of expression sometimes used with reference to courts of justice of general jurisdiction, that having the power to punish for contempts, the judgment of the House that a person is guilty of such contempt is conclusive everywhere.

Conceding for the sake of the argument that there are cases in which one of the two bodies, that constitute the Congress of the United States, may punish for contempt of its authority, or disregard of its orders, it will scarcely be contended by the most ardent advocate of their power in that respect that it is unlimited.

The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely on the Constitution. Such as are not conferred by that instrument, either expressly or by fair implication from what is granted, are "re-

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[1] 8 U.S.C. §§ 43, 47 (3).

[2] See Judge Edgerton dissenting in *Barsky* v. *United States*, 83 U.S. App. D.C. 127, 138, 167 F. 2d 241, 252; Judge Charles E. Clark dissenting in *United States* v. *Josephson*, 165 F. 2d 82, 93.

[3] N.Y. Times, Mar. 16, 1951, p. 1, col. 2; N.Y. Times, Mar. 17, 1951, p. 1, col. 2. The situation was graphically described in an editorial appearing in *La Nacion* of Buenos Aires on March 18, 1951: "But no one could have imagined until this moment that Congress, properly invested with implicit powers of investigation, could decree interventions of this nature intended to carry out acts which, under no circumstances come within the province of the Legislature. In the present case this alteration of functions is unusual importance because it affects an inviolable constitutional principle. If Congress cannot dictate 'laws restrictive of the freedom of the press [Art. 23, Argentine Constitution], which would be the only possible step within its specific function, how could it take possession of newspapers, hinder their activity and decide their fate, all these being acts whereby the exercise of that same freedom is rendered impracticable? If such a state of things is permitted and becomes generalized, then it means that the repetition of these acts whenever it is deemed suitable in view of conflicting opinions, would cause the constitutional guarantee to be utterly disregarded. . . . Last year the activities of an investigating congressional commission [The Committee on Anti-Argentine Activities], appointed for another concrete purpose, served to bring about the closure of up to 49 newspapers in one day. . . . " See generally, Editor & Publisher, Mar. 24, 1951, p. 5.

[4] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

served to the States respectively, or to the people." Of course, neither branch of Congress, when acting separately, can lawfully exercise more power than is conferred by the Constitution on the whole body, except in the few instances where authority is conferred on either House separately, as in the case of impeachments. No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains in the provision that no "person shall be deprived of life, liberty, or property, without due process of law," the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established. An act of Congress which proposed to adjudge a man guilty of a crime and inflict the punishment, would be conceded by all thinking men to be unauthorized by anything in the Constitution. That instrument, however, is not wholly silent as to the authority of the separate branches of Congress to inflict punishment. It authorizes each House to punish its own members. By the second clause of the fifth section of the first article, "Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member," and by the clause immediately preceding, it "may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide." These provisions are equally instructive in what they authorize and in what they do not authorize. There is no express power in that instrument conferred on either House of Congress to punish for contempts.

The advocates of this power have, therefore, resorted to an implication of its existence, founded on two principal arguments. These are, 1, its exercise by the House of Commons of England, from which country we, it is said, have derived our system of parliamentary law; and, 2d, the necessity of such a power to enable the two Houses of Congress to perform the duties and exercise the powers which the Constitution has conferred on them.

That the power to punish for contempt has been exercised by the House of Commons in numerous instances is well known to the general student of history, and is authenticated by the rolls of the Parliament. And there is no question but that this has been upheld by the courts of Westminster Hall. Among the most notable of these latter cases are the judgments of the Court of King's Bench, in *Brass Crosby's Case* (3 Wils. 188), decided in the year 1771; *Burdett* v. *Abbott* (14 East, 1), in 1811, in which the opinion was delivered by Lord Ellenborough; and *Case of the Sheriff of Middlesex* (11 Ad. & E. 278), in 1840. Opinion by Lord Denman, Chief Justice.

It is important, however, to understand on what principle this power in the House of Commons rests, that we may see whether it is applicable to the two Houses of Congress, and, if it be, whether there are limitations to its exercise.

While there is, in the adjudged cases in the English courts, little agreement of opinion as to the extent of this power, and the liability of its exercise to be inquired into by the courts, there is no difference of opinion as to its origin. This goes back to the period when the bishops, the lords, and the knights and burgesses met in one body, and were, when so assembled, called the High Court of Parliament.

They were not only called so, but the assembled Parliament exercised the highest functions of a court of judicature, representing in that respect the judicial authority of the king in his Court of Parliament. While this body enacted laws, it also rendered judgments in matters of private right, which, when approved by the king, were recognized as valid. Upon the separation of the Lords and Commons into two separate bodies, holding their sessions in different chambers, and hence called the House of Lords and the House of Commons, the judicial function of reviewing by appeal the decisions of the courts of Westminster Hall passed to the House of Lords, where it has been exercised without dispute ever since. To the Commons was left the power of impeachment, and, perhaps, others of a judicial character, and jointly they exercised, until a very recent period, the power of passing bills of attainder for treason and other high crimes which are in their nature punishment for crime declared judicially by the High Court of Parliament of the Kingdom of England.

It is upon this idea that the two Houses of Parliament were each courts of judicature originally, which, though divested by usage, and by statute, probably, of many of their judicial functions, have yet retained so much of that power as enables them, like any other court, to punish for a contempt of these privileges and authority that the power rests.

In the case of *Burdett* v. *Abbott*, already referred to as sustaining this power in the Commons, Mr. Justice Bailey said, in support of the judgment of the Court of King's Bench: "In an early authority upon that subject, in Lord Coke, 4 Inst. 23, it is expressly laid down that the House of Commons has not only a legislative character and authority, but is also a court of judicature; and there are instances put there in which the power of committing to prison for contempts has been exercised by the House of Commons, and this, too, in cases of libel. If then, the House be a court of judicature, it must, as is in a degree admitted by the plaintiff's counsel, have the power of supporting its own dignity as essential to itself; and without power of commitment for contempts it could not support its dignity." In the opinion of Lord Ellenborough in the same case, after stating that the separation of the two Houses of Parliament seems to have taken place as early as the 49 Henry III., about the time of the battle of Evesham, he says the separation was probably effected by a formal act for that purpose by the king and Parliament. He then adds: "The privileges which have since been enjoyed, and the functions which have been since uniformly exercised by each branch of the legislature, with the knowledge and acquiescence of the other House and of the king, must be presumed to be the privileges and functions which then, that is, at the very period of their original separation, were statutably assigned to each." He then asks, "Can the High Court of Parliament, or either of the two Houses of which it consists, be deemed not to possess intrinsically that authority of punishing summarily for contempts, which is acknowledged to belong, and is daily exercised as belonging, to every superior court of law, of less dignity undoubtedly than itself?" This power is here distinctly placed on the ground of the judicial character of Parliament, which is compared in that respect with the other courts of superior jurisdiction, and is said to be of a dignity higher than they.

In the earlier case of Crosby, Lord Mayor of London, De Gray, Chief Justice, speaking of the House of Commons, which had committed the lord mayor to the Tower of London for having arrested by judicial process one of its messengers, says: "Such an assembly must certainly have such authority, and it is legal because necessary. Lord Coke says they have a judicial power; each member has a judicial seat in the House; he speaks of matters of judicature of the House of Commons." Mr. Justice Blackstone, in concurring in the judgment, said:

"The House of Commons is a Supreme Court, and they are judges of their own privileges and contempts, more especially with respect to their own members." Mr. Justice Gould also laid stress upon the fact that the "House of Commons may be properly called judges," and cites 4 Coke's Inst. 47, to show that "an alien cannot be elected to Parliament, *because such a person can hold no place of judicature.*"

In the celebrated case of *Stockdale* v. *Hansard* (9 Ad. & E. 1), decided in 1839, this doctrine of the omnipotence of the House of Commons in the assertion of its privileges received its first serious check in a court of law. The House of Commons had ordered the printing and publishing of a report of one of its committees, which was done by Hansard, the official printer of the body. This report contained matter on which Stockdale sued Hansard for libel. Hansard pleaded the privilege of the House, under whose orders he acted, and the question on demurrer was, assuming the matter published to be libellous in its character, did the order of the House protect the publication?

Sir John Campbell, Attorney-General, in an exhaustive argument in defense of the prerogative of the House, bases it upon two principal propositions; namely, that the House of Commons is a court of judicature, possessing the same right to punish for contempt that other courts have, and that its powers and privileges rest upon the *lex parliamenti*,—the laws and customs of Parliament. These, he says, and cites authorities to show it, are unknown to the judges and lawyers of the common-law courts and rest exclusively in the knowledge and memory of the members of the two Houses. He argues, therefore, that their judgments and orders on matters pertaining to these privileges are conclusive, and cannot be disputed or reviewed by the ordinary courts of judicature.

Lord Denman, in a masterly opinion, concurred in by the other judges of the King's Bench, ridicules the idea of the existence of a body of laws and customs of Parliament unknown and unknowable to anybody else but the members of the two Houses, and holds with an incontrovertible logic that when the rights of the citizen are at stake in a court of justice, it must, if these privileges are set up to his prejudice, examine for itself the nature and character of those laws, and decide upon their extent and effect upon the rights of the parties before the court. While admitting, as he does in *Case of the Sheriff of Middlesex* (11 Ad. & E. 273), that when a person is committed by the House of Commons for a contempt in regard to a matter of which that House had jurisdiction, no other court can relieve the party from the punishment which it may lawfully inflict, he holds that the question of the jurisdiction of the House is always open to the inquiry of the courts in a case where that question is properly presented.

But perhaps the most satisfactory discussion of this subject, as applicable to the proposition that the two House of Congress are invested with the same power of punishing for contempt, and with the same peculiar privileges, and the same power of enforcing them, which belonged by ancient usage to the Houses of the English Parliament, is to be found in some recent decisions of the Privy Council. That body is by its constitution vested with authority to hear and decide appeals from the courts of the provinces and colonies of the kingdom.

The leading case is that of *Kielley* v. *Carson and Others* (4 Moo. P.C. 63), decided in 1841. There were present at the bearing Lord Chancellor Lyndhurst, Lord Brougham, Lord Denman, Lord Abinger, Lord Cottenham, Lord Campbell, Vice-Chancellor Shadwell, the Chief Justice of the Common Pleas, Mr. Justice Erskine, Dr. Lushington, and Mr. Baron Parke, who delivered the opinion,

which seems to have received the concurrence of all the eminent judges named.

Measuring the weight of its authority by the reputation of the judges who sat in the case and agreed to the opinion, it would be difficult to find one more entitled on that score to be received as conclusive on the points which it decided.

The case was an appeal from the Supreme Court of Judicature of Newfoundland. John Kent, one of the members of the House of Assembly of that island, reported to that body that Kielley, the appellant, had been guilty of a contempt of the privileges of the House in using towards him reproaches, in gross and threatening language, for observations made by Kent in the House; adding, "Your privilege shall not protect you." Kielley was brought before the House, and added to his offence by boisterous and violent language, and was finally committed to jail under an order of the House and the warrant of the speaker. The appellant sued Carson, the speaker, Kent, and other members, and Walsh, the messenger, who pleaded the facts above stated, and relied on the authority of the House as sufficient protection. The judgment of the court of Newfoundland was for the defendants, holding the plea good.

This judgment was supported in argument before the Privy Council on the ground that the Legislative Assembly of Newfoundland had the same parliamentary rights and privileges which belonged by usage to the Parliament of England, and that, if this were not so, it was a necessary incident to every body exercising legislative functions to punish for contempt of its authority. The case was twice argued in the Privy Council, on which its previous judgment in the case of *Beaumont* v. *Barrett* (1 Moo. P. C. 59) was much urged, in which both those propositions had been asserted in the opinion of Mr. Baron Parke. Referring to that case as an authority for the proposition that the power to punish for a contempt was incident to every legislative body, the opinion of Mr. Baron Parke in the later case uses this language: "There is no decision of a court of justice, nor other authority, in favor of the right, except that of the case of *Beaumont* v. *Barrett*, decided by the Judicial Committee, the members present being Lord Brougham, Mr. Justice Bosanquet, Mr. Justice Erskine, and myself. Their Lordships do not consider that case as one by which they ought to be bound on deciding the present question.

"The opinion of their Lordships, delivered by myself immediately after the argument was closed, though it clearly expressed that the power was incidental to every legislative assembly, was not the only ground on which that judgment was rested, and therefore was, in some degree, extra-judicial; but besides, it was stated to be and was founded entirely on the *dictum* of Lord Ellenborough in *Burdett* v. *Abbott*, which *dictum*, we all think, cannot be taken as authority for the abstract proposition that every legislative body has the power of committing for contempt. The observation was made by his Lordship with reference to the peculiar powers of Parliament, and ought not, we all think, to be extended any further. We all, therefore, think that the opinion expressed by myself in the case of *Beaumont* v. *Barrett* ought not to affect our decision in the present case, and, there being no other authority on the subject, we decide according to the principle of the common law, that the House of Assembly have not the power contended for. They are a local legislature, with every power reasonably necessary for the exercise of their functions and duties, but they have not what they erroneously supposed themselves to possess—the same exclusive privileges which the ancient law of England has annexed to the House of Parliament." In another part of the opinion the subject is thus disposed of: "It is said, however, that this power belongs to the House of Commons in England; and this, it is contended, affords an authority for holding that it belongs, as a legal incident by the common law, to an assembly with analogous functions. But the reason why the House of Commons has this power is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetudo parliamenti*, which forms a part of the common law of the land, and according to which the High Court of Parliament before its division, and the Houses of Lords and Commons since, are invested with many privileges, that of punishment for contempt being one." The opinion also discusses at length the necessity of this power in a legislative body for its protection, and to enable it to discharge its law-making functions, and decides against the proposition. But the case before us does not require us to go so far, as we have cited it to show that the powers and privileges of the House of Commons of England, on the subject of punishment for contempts, rest on principles which have no application to other legislative bodies, and certainly can have none to the House of Representatives of the United States—a body which is in no sense a court, which exercises no functions derived from its once having been a part of the highest court of the realm, and whose functions, so far as they partake in any degree of that character, are limited to punishing its own members and determining their election. The case, however, which we have just been considering, was followed in the same body by *Fenton* v. *Hampton* (11 Moo. P.C. 347) and *Doyle* v. *Falconer* (Law Rep. 1 P.C. 328), in both of which, on appeals from other provinces of the kingdom, the doctrine of the case of *Kielley* v. *Carson and Others* is fully reaffirmed.

We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation.

This latter proposition is one which we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or non-existence of such a power in aid of the legislative function.

As we have already said, the Constitution expressly empowers each House to punish its own members for disorderly behavior. We seen no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.

So, also, the penalty which each House is authorized to inflict in order to compel the attendance of absent members may be imprisonment, and this may be for a violation of some order or standing rule on that subject.

Each House is by the Constitution made the judge of the election and qualification of its members. In deciding on these it has an undoubted right to examine witnesses and inspect papers, subject to the usual rights of witnesses in such cases; and it may be that a witness would be subject to like punishment at the hands of the body engaged in trying a contested election, for refusing to testify, that he would if the case were pending before a court of judicature.

The House of Representatives has the sole right to impeach officers of the government, and the Senate to try them. Where the question of such impeachment is before either body acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases.

Whether the power of punishment in either House by fine or imprisonment goes beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.

It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. One of these is, that the President is so far made a part of the legislative power, that his assent is required to the enactment of all statutes and resolutions of Congress.

This, however, is so only to a limited extent, for a bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each House of Congress.

So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles of impeachment.

In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another.

It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success. The increase in the number of States, in their population and wealth, and in the amount of power, if not in its nature to be exercised by the Federal government, presents powerful and growing temptations to those to whom that exercise is intrusted, to overstep the just boundaries of their own department, and enter upon the domain of one of the others,

or to assume powers not intrusted to either of them.

The House of Representatives having the exclusive right to originate all bills for raising revenue, whether by taxation or otherwise; having with the Senate the right to declare war and fix the compensation of all officers and servants of the government, and vote the supplies which must pay that compensation; and being also the most numerous body of all those engaged in the exercise of the primary powers of the government,—is for these reasons least of all liable to encroachments upon its appropriate domain.

By reason, also, of its popular origin, and the frequency with which the short term of office of its members requires the renewal of their authority at the hands of the people,—the great source of all power in this country,—encroachments by that body on the domain of co-ordinate branches of the government would be received with less distrust than a similar exercise of unwarranted power by any other department of the government. It is all the more necessary, therefore, that the exercise of power by this body, when acting separately from and independently of all other depositaries of power, should be watched with vigilance, and when called in question before any other tribunal having the rights to pass upon it that it should receive the most careful scrutiny.

In looking to the preamble and resolution under which the committee acted, before which Kilbourn refused to testify, we are of opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because it was in its nature clearly judicial.

The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred. If the investigation which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the government. We think it equally clear that the power asserted is judicial and not legislative.

The preamble to the resolution recites that the government of the United States is a creditor of Jay Cooke & Co., then in bankruptcy in the District Court of the United States for the Eastern District of Pennsylvania.

If the United States is a creditor of any citizen, or of any one else on whom process can be served, the usual, the only legal mode of enforcing payment of the debt is by a resort to a court of justice. For this purpose, among others, Congress has created courts of the United States, and officers have been appointed to prosecute the pleas of the government in these courts.

The District Court for the Eastern District of Pennsylvania is one of them, and, according to the recital of the preamble, had taken jurisdiction of the subject-matter of Jay Cooke & Co.'s indebtedness to the United States, and had the whole subject before it for action at the time the proceeding in Congress was initiated. That this indebtedness resulted, as the preamble states, from the improvidence of a secretary of the navy does not change the nature of the suit in the court nor vary the remedies by which the debt is to be recovered. If, indeed, any purpose had been avowed to impeach the secretary, the whole aspect of the case would have been changed. But no such purpose is disclosed. None can be inferred from the preamble, and the characterization of the conduct of the secretary by the term "improvident," and the absence of any words implying suspicion of criminality repel the idea of such purpose, for the secretary could only be impeached for "high crimes and misdemeanors."

The preamble then refers to "the real-estate pool," in which it is said Jay Cooke & Co. had a large interest, as something well known and understood, and which had been the subject of a partial investigation by the previous Congress, and alleges that the trustee in bankruptcy of Jay Cooke & Co. had made a settlement of the interest of Jay Cooke & Co. with the associates of the firm of Jay Cooke & Co., to the disadvantage and loss of their numerous creditors, including the government of the United States, by reason of which the courts are powerless to afford adequate redress to said creditors.

Several very pertinent inquiries suggest themselves as arising out of this short preamble.

How could the House of Representatives know, until it had been fairly tried, that the courts were powerless to redress the creditors of Jay Cooke & Co.? The matter was still pending in a court, and what right had the Congress of the United States to interfere with a suit pending in a court of competent jurisdiction? Again, what inadequacy of power existed in the court, or, as the preamble assumes, in all courts, to give redress which could lawfully be supplied by an investigation by a committee of one House of Congress, or by any act or resolution of Congress on the subject? The case being one of a judicial nature, for which the power of the courts usually afford the only remedy, it may well be supposed that those powers were more appropriate and more efficient in aid of such relief than the powers which belong to a body whose function is exclusively legislative. If the settlement to which the preamble refers as the principal reason why the courts are rendered powerless was obtained by fraud, or was without authority, or for any conceivable reason could be set aside or avoided, it should be done by some appropriate proceeding in the court which had the whole matter before it, and which had all the power in that case proper to be intrusted to any body, and not by Congress or by any power to be conferred on a committee of one of the two Houses.

The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By "fruitless" we mean that it could result in no valid legislation on the subject to which the inquiry referred.

What was this committee charged to do? To inquire into the nature and history of the real-estate pool. How indefinite! What was the real-estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of it. Is it charged with a fraud against the government? Here, again, the courts, and they alone, can afford a remedy. Was it a corporation whose powers Congress could repeal? There is no suggestion of the kind. The word "pool," in the sense here used, is of modern date, and may not be well understood, but in this case it can mean no more than that certain individuals are engaged in dealing in real estate as a commodity of traffic; and the *gravamen* of the whole proceeding is that a debtor of the United States may be found to have an interest in the pool. Can the rights of the pool, or of its members, and the rights of the debtor, and of the creditor of the debtor, be determined by the report of a committee or by an act of Congress? If they cannot, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the government.

The Court of Exchequer of England was originally organized solely to entertain suits of the king against the debtors of the crown. But after a while, when the other courts of Westminster Hall became overcrowded with business, and it became desirable to open the Court of Exchequer to the general administration of justice, a party was allowed to bring any commonlaw action in that court, on an allegation that the plaintiff was debtor to the king, and the recovery in the action would enable him to respond to the king's debt. After a while the court refused to allow this allegation to be controverted, and so, by this fiction, the court came from a very limited to be one of general jurisdiction. Such an enlargement of jurisdiction would not now be tolerated in England, and it is hoped not in this country of written constitutions and laws; but it looks very like it when, upon the allegation that the United States is a creditor of a man who has an interest in some other man's business, the affairs of the latter can be subjected to the unlimited scrutiny or investigation of a congressional committee.

We are of opinion, for these reasons, that the resolution of the House of Representatives authorizing the investigation was in excess of the power conferred on that body by the Constitution; that the committee, therefore, had no lawful authority to require Kilbourn to testify as a witness beyond what he voluntarily chose to tell; that the orders and resolutions of the House, and the warrant of the speaker, under which Kilbourn was imprisoned, are, in like manner, void for want of jurisdiction in that body, and that his imprisonment was without any lawful authority.

At this point of the inquiry we are met by *Anderson* v. *Dunn* (6 Wheat. 204), which in many respects is analogous to the case now under consideration. Anderson sued Dunn for false imprisonment, and Dunn justified under a warrant of the House of Representatives directed to him as sergeant-at-arms of that body. The warrant recited that Anderson had been found by the House "guilty of a breach of the privileges of the House, and of a high contempt of the dignity and authority of the same." The warrant directed the sergeant-at-arms to bring him before the House, when by its order, he was reprimanded by the speaker. Neither the warrant nor the plea described or gave any clew to the nature of the act which was held by the House to be a contempt. Nor can it be clearly ascertained from the report of the case what it was, though a slight inference may be derived from something in one of the arguments of counsel, that it was an attempt to bribe a member.

But, however that may be, the defence of the sergeant-at-arms rested on the broad ground that the House, having found the plaintiff guilty of a contempt, and the speaker, under the order of the House, having issued a warrant for his arrest, that alone was sufficient authority for the defendant to take him into custody, and this court held the plea good.

It may be said that since the order of the House, and the warrant of the speaker, and the plea of the sergeant-at-arms, do not dis-

close the ground on which the plaintiff was held guilty of a contempt, but state the finding of the House in general terms as a judgment of guilty, and as the court placed its decision on the ground that such a judgment was conclusive in the action against the officer who executed the warrant, it is no precedent for a case where the plea establishes, as we have shown it does in this case by its recital of the facts, that the House has exceeded its authority.

This is, in fact, a substantial difference But the court in its reasoning goes beyond this, and though the grounds of the decision are not very clearly stated, we take them to be; that there is in some cases a power in each House of Congress to punish for contempt; that this power is analogous to that exercised by courts of justice, and that, it being the well-established doctrine that when it appears that a prisoner is held under the order of a court of general jurisdiction for a contempt of its authority, no other court will discharge the prisoner or make further inquiry into the cause of his commitment. That this is the general rule, though somewhat modified since that case was decided, as regards the relations of one court to another, must be conceded.

But we do not concede that the Houses of Congress possess this general power of punishing for contempt. The cases in which they can do this are very limited, as we have already attempted to show. If they are proceeding in a matter beyond their legitimate cognizance, we are of opinion that this can be shown, and we cannot give our assent to the principle that, by the mere act of asserting a person to be guilty of a contempt, they thereby establish their right to fine and imprison him, beyond the power of any court or any other tribunal whatever to inquire into the grounds on which the order was made. This necessarily grows out of the nature of an authority which can only exist in a limited class of cases, or under special circumstances; otherwise the limitation is unavailing and the power omnipotent. The tendency of modern decisions everywhere is to the doctrine that the jurisdiction of a court or other tribunal to render a judgment affecting individual rights, is always open to inquiry, when the judgment is relied on in any other proceeding. See *Williamson* v. *Berry*, 8 How. 495; *Thompson* v. *Whitman*, 18 Wall. 457; *Knowles* v. *The Gas-Light & Coke Co.*, 19 id. 58; *Pennoyer* v. *Neff*, 95 U. S. 714.

The case of *Anderson* v. *Dunn* was decided before the case of *Stockdale* v. *Hansard*, and the more recent cases in the Privy Council to which we have referred. It was decided as a case of the first impression in this court, and undoubtedly under pressure of the strong rulings of the English courts in favor of the privileges of the two Houses of Parliament. Such is not the doctrine, however, of the English courts to-day. In the case of *Stockdale* v. *Hansard* (9 Ad. & E. 1), Mr. Justice Coleridge says: "The House is not a court of law at all in the sense in which that term can alone be properly applied here. Neither originally nor by appeal can it decide a matter in litigation between two parties; it has no means of doing so; it claims no such power; powers of inquiry and of accusation it has, but it decides nothing judicially, except where it is itself a party, in the case of contempts. . . . Considered merely as resolutions or acts, I have yet to learn that this court is to be restrained by the dignity or the power of any body, however exalted, from fearlessly, though respectfully, examining their reasonableness and justice, where the rights of third persons, in litigation before us, depend upon their validity." Again, he says: "Let me suppose, by way of illustration, an extreme case; the House of Commons resolves that any one wearing a dress of a particular manufacture is guilty of a breach of privilege, and orders the arrest of such persons by the constable of the parish. An arrest is made and action brought, to which the order of the House is pleaded as a justification. . . . In such a case as the one supposed, the plaintiff's counsel would insist on the distinction between power and privilege; and no lawyer can seriously doubt that it exists: but the argument confounds them, and forbids us to enquire, in any particular case, whether it ranges under the one or the other. I can find no principle which sanctions this."

The case of *Kielley* v. *Carson and Others* (4 Moo. P. C. 63), from which we have before quoted so largely, held that the order of the assembly, finding the plaintiff guilty of a contempt, was no defence to the action for imprisonment. And it is to be observed that the case of *Anderson* v. *Dunn* was cited there in argument.

But we have found no better expression of the true principle on this subject than in the following language of Mr. Justice Hoar, in the Supreme Court of Massachusetts, in the case of *Burnham* v. *Morrissey*, 14 Gray, 226. That was a case in which the plaintiff was imprisoned under an order of the House of Representatives of the Massachusetts legislature for refusing to answer certain questions as a witness and to produce certain books and papers. The opinion, or statement rather, was concurred in by all the court, including the venerable Mr. Chief Justice Shaw.

"The house of representatives is not the final judge of its own powers and privileges in cases in which the rights and liberties of the subject are concerned, but the legality of its action may be examined and determined by this court. That house is not the legislature, but only a part of it, and is therefore subject in its actions to the laws, in common with all other bodies, officers, and tribunals within the Commonwealth. Especially is it competent and proper for this court to consider whether its proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void. The house of representatives has the power under the Constitution to imprison for contempt; but the power is limited to cases expressly provided for by the Constitution, or to cases where the power is necessarily implied from those constitutional functions and duties, to the proper performance of which it is essential."

In this statement of the law, and in the principles there laid down, we fully concur.

We must, therefore, hold notwithstanding what is said in the case of *Anderson* v. *Dunn*, that the resolution of the House of Representatives finding Kilbourn guilty of contempt, and the warrant of its speaker for his commitment to prison, are not conclusive in this case, and in fact are no justification, because, as the whole plea shows, the House was without authority in the matter.

It remains to consider the matter special to the other defendants set out in their plea, which claims the protection due to their character as members of the House of Representatives. In support of this defence they allege that they did not in any manner assist in the arrest of Kilbourn or his imprisonment, nor did they order or direct the same, except by their votes and by their participation as members in the introduction of, and assent to, the official acts and proceedings of the House, which they did and performed as members of the House, in the due discharge of their duties, and not otherwise.

As these defendants did not make the actual assault on the plaintiff, nor personally assist in arresting or confining him, they can only be held liable on the charge made against them as persons who had ordered or directed in the matter, so as to become responsible for the acts which they directed

The general doctrine that the person who procures the arrest of another by judicial process, by instituting and conducting the proceedings, is liable to an action for false imprisonment, where he acts without probable cause, is not to be controverted. Nor can it be denied that he who assumes the authority to order the imprisonment of another is responsible for the acts of the person to whom such order is given, when the arrest is without justification. The plea of these defendants shows that it was they who initiated the proceedings under which the plaintiff was arrested. It was they who reported to the House his refusal to answer the questions which they had put to him, and to produce the books and papers which they had demanded of him. They expressed the opinion in that report that plaintiff was guilty of a contempt of the authority of the House in so acting. It is a fair inference from this plea that they were the active parties in setting on foot the proceeding by which he was adjudged guilty of a contempt, and in procuring the passage of that resolution.

If they had done this in any ordinary tribunal, without probable cause, they would have been liable for the action which they had thus promoted.

The House of Representatives is not an ordinary tribunal. The defendants set up the protection of the Constitution, under which they do business as part of the Congress of the United States. That Constitution declares that the senators and representatives "shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place."

Is what the defendants did in the matter in hand covered by this provision? Is a resolution offered by a member, a speech or debate, within the meaning of the clause? Does its protection extend to the report which they made to the House of Kilbourn's delinquency? To the expression of opinion that he was in contempt of the authority of the House? To their vote in favor of the resolution under which he was imprisoned? If these questions be answered in the affirmative, they cannot be brought in question for their action in a court of justice or in any other place. And yet if a report, or a resolution, or a vote is not a speech or debate, of what value is the constitutional protection?

We may, perhaps, find some aid in ascertaining the meaning of this provision, if we can find out its source, and fortunately in this there is no difficulty. For while the framers of the Constitution did not adopt the *lex et consuetudo* of the English Parliament as a whole, they did incorporate such parts of it, and with it such privileges of Parliament, as they thought proper to be applied to the Houses of Congress. Some of these we have already referred to, as the right to make rules of procedure, to determine the election and qualification of its members, to preserve order, &c. In the sentence we have just cited another part of the privileges of Parliament are made privileges of Congress. The freedom from arrest and freedom of speech in the two Houses of Parliament were long subjects of contest between the Tudor and Stuart kings and the House of Commons. When, however, the revolution of 1688 expelled the last of the Stuarts and introduced a new dynasty, many of these ques-

tions were settled by a bill of rights, formally declared by the Parliament and assented to by the crown. 1 W. & M., st 2, c. 2. One of these declarations is "that the freedom of speech, and debates, and proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament."

In *Stockdale* v. *Hansard*, Lord Denman, speaking on this subject, says: "The privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament by a member to the prejudice of any other person, or hazardous to the public peace, that member enjoys complete impunity. For every paper signed by the speaker by order of the House, though to the last degree calumnious, or even if it brought personal suffering upon individuals, the speaker cannot be arraigned in a court of justice. But if the calumnious or inflammatory speeches should be reported and published, the law will attach responsibility on the publisher. So if the speaker by authority of the House order an illegal act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship-money could justify his revenue officer."

Taking this to be a sound statement of the legal effect of the Bill of Rights and of the parliamentary law of England, it may be reasonably inferred that the framers of the Constitution meant the same thing by the use of language borrowed from that source.

Many of the colonies, which afterwards became States in our Union, had similar provisions in their charters or in bills of rights, which were part of their fundamental laws; and the general idea in all of them, however expressed, must have been the same and must have been in the minds of the members of the constitutional convention. In the Constitution of the State of Massachusetts of 1780, adopted during the war of the Revolution, the twenty-first article of the Bill of Rights embodies the principle in the following language: "The freedom of deliberation, speech, and debate in either House of the legislature is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action, or complaint, in any other court or place whatsoever."

This article received a construction as early as 1808, in the Supreme Court of that State, in the case of *Coffin* v. *Coffin* (4 Mass. 1), in which Mr. Chief Justice Parsons delivered the opinion. The case was an action for slander, the offensive language being used in a conversation in the House of Representatives of the Massachusetts legislature. The words were not delivered in the course of a regular address or speech, though on the floor of the House while in session, but were used in a conversation between three of the members, when neither of them was addressing the chair. It had relation, however, to a matter which had a few moments before been under discussion. In speaking of this article of the Bill of Rights, the protection of which had been involved in the plea, the Chief Justice said: "These privileges are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosections, civil or criminal. I, therefore, think that the article ought not to be construed strictly, but liberally, that the full design of it may be answered. I will not confine it to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office. And I would define the article as securing to every member exemption from prosecution for everything said or done by him as a representative, in the exercise of the functions of that office, without inquiring whether the exercise was regular, according to the rules of the House, or irregular and against their rules. I do not confine the member to his place in the House; and I am satisfied that there are cases in which he is entitled to this privilege when not within the walls of the representatives' chamber."

The report states that the other judges, namely, Sedgwick, Sewall, Thatcher, and Parker, concurred in the opinion.

This is, perhaps, the most authoritative case in this country on the construction of the provision in regard to freedom of debate in legislative bodies, and being so early after the formation of the Constitution of the United States, is of much weight. We have been unable to find any decision of a Federal court on this clause of section 6 of article 1, though the previous clause concerning exemption from arrest has been often construed.

Mr. Justice Story (sect. 866 of his Commentaries on the Constitution) says: "The next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant or ineffectual. This privilege also is derived from the practice of the British Parliament, and was in full exercise in our colonial legislation, and now belongs to the legislation of every State in the Union as matter of constitutional right."

It seems to us that the views expressed in the authorities we have cited are sound and are applicable to this case. It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, whether it is done vocally or by passing between the tellers. In short, to things generally done in a session of the House by one of its members in relation to the business before it.

It is not necessary to decide here that there may not be things done, in the one House or the other, of an extraordinary character, for which the members who take part in the act may be held legally responsible. If we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment we are not prepared to say that such an utter perversion of their powers to a criminal purpose would be screened from punishment by the constitutional provision for freedom of debate. In this, as in other matters which have been pressed on our attention, we prefer to decide only what is necessary to the case in hand, and we think the plea set up by those of the defendants who were members of the House is a good defense, and the judgment of the court overruling the demurrer to it and giving judgment for those defendants will be affirmed. As to Thompson, the judgment will be reversed and the case remanded for further proceedings.

So ordered.

BARNEY v. LATHAM

1. The second clause of the second section of the act of March 3, 1875, c. 137 (18 Stat., part 3, p. 470), construed, and *held*, that, when in any suit mentioned therein there is a controversy wholly between citizens of different States, which can be fully determined as between them, then either one or more of the plaintiffs or the defendants actually interested in such controversy may, on complying with the requirements of the statute, remove the entire suit.

2. The right of removal depends upon the case disclosed by the pleadings when the petition therefor is filed, and is not affected by the fact that a defendant who is a citizen of the same State with one of the plaintiffs may be a proper, but not an indispensable, party to such a controversy.

APPEAL from the Circuit Court of the United States for the District of Minnesota.

The facts are stated in the opinion of the court.

Mr. Thomas Wilson for the appellants.

Mr. Gordon E. Cole, contra.

Mr. JUSTICE HARLAN delivered the opinion of the court.

This case involves the construction of the second clause of the second section of the act of March 3, 1875, c. 137 (18 Stat., part 3, p. 470), determining the jurisdiction of the circuit courts of the United States, and regulating the removal of causes from the State courts.

EXHIBIT 3

(Certiorari to the U.S. Court of Appeals for the Fourth Circuit)

UNITED STATES *v.* JOHNSON

No. 25. Argued November 10 and 15, 1965—Decided February 24, 1966.

Respondent, a former Congressman, was convicted on several counts of violating the conflict of interest statute (18 U.S.C. § 281) and on one count of conspiring to defraud the United States (18 U.S.C. § 371). The conspiracy charge involved an alleged agreement whereby respondent and another Congressman would attempt to influence the Justice Department to dismiss pending savings and loan company mail fraud indictments. As part of the conspiracy respondent allegedly delivered for pay a speech in Congress favorable to loan companies. The Government contended and adduced proof to show that the speech was delivered to serve private interests; that respondent was not acting in good faith; and that he did not prepare or deliver the speech as a Congressman would ordinarily do. The Court of Appeals set aside the conviction on the conspiracy count as being barred by Art I, § 6, of the Constitution, providing that "for any Speech or Debate in either House" Senators and Representatives "shall not be questioned in any other Place," and ordered retrial on the substantive counts. *Held*.

1. The Speech or Debate Clause precludes judicial inquiry into the motivation for a Congressman's speech and prevents such a speech from being made the basis of a criminal charge against a Congressman for conspiracy to defraud the Government by impeding the due discharge of its functions. Pp. 173–185.

(a) The Speech or Debate Clause, which emerged from the long struggle for parliamentary supremacy, embodies a privilege designed to protect members of the legislature against prosecution by a possibly unfriendly executive and conviction by a possibly hostile judiciary. Pp. 177–180.

(b) The privilege, which will be broadly construed to effectuate its purposes, *Kilbourn* v. *Thompson*, 103 U.S. 168; *Tenney* v. *Brandhove*, 341 U.S. 367, was created not primarily to avoid private suits as in those cases, but to prevent legislative intimidation by and accountability to the other branches of government. Pp. 180–182.

(c) The Speech or Debate Clause forecloses inquiry not only into the "content"

of a congressional speech but into circumstances involving the motives for making it. Pp. 182–183.

(d) Prosecution under a general criminal statute involving inquiry into the motives for and circumstances surrounding a congressional speech is barred even though the gravamen of the offense is the alleged conspiracy rather than the speech itself. Pp. 184–185.

2. The Government is not precluded from retrying the conspiracy count as purged of all the elements offensive to the Speech or Debate Clause. P. 185.

3. This Court does not review the Court of Appeals' determination that the substantive counts be retried because of the prejudicial effect thereon resulting from the unconstitutional aspects of the conspiracy count since the Government does not dispute that determination in this proceeding. Pp. 185–186.

337 F. 2d 180, affirmed and remanded.

Beatrice Rosenberg argued the cause for the United States. With her on the briefs were *Solicitor General Marshall, Assistant Attorney General Vinson, Ralph S. Spritzer* and *Jerome M. Feit.*

George Cochran Doub and *David W. Louisell* argued the cause and filed a brief for respondent.

Eugene Gressman and *Edward L. Genn* filed a brief for J. Kenneth Edlin, as *amicus curiae,* urging affirmance.

MR. JUSTICE HARLAN delivered the opinion of the Court.

Respondent Johnson, a former United States Congressman, was indicted and convicted on seven counts of violating the federal conflict of interest statute, 18 U.S.C. § 281 (1964 ed.),[1] and on one count of conspiring to defraud the United States, 18 U.S.C. § 371 (1964 ed.).[2] The Court of Appeals for the Fourth Circuit set aside the conviction on the conspiracy count, 337 F. 2d 180, holding that the Government's allegation that Johnson had conspired to make a speech for compensation on the floor of the House of Representatives was barred by Art. I, § 6, of the Federal Constitution which provides that "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other Place." The Court of Appeals ordered a new trial on the other counts, having found that the evidence adduced under the unconstitutional aspects of the conspiracy count had infected the entire prosecution.

The conspiracy of which Johnson and his three codefendants were found guilty consisted, in broad outline, of an agreement among Johnson, Congressman Frank Boykin of Alabama, and J. Kenneth Edlin and William L. Robinson who were connected with a Maryland savings and loan institution, whereby the two Congressmen would exert influence on the Department of Justice to obtain the dismissal of pending indictments of the loan company and its officers on mail fraud charges. It was further claimed that as a part of this general scheme Johnson read a speech favorable to independent savings and loan associations in the House, and that the company distributed copies to allay apprehensions of potential depositors. The two Congressmen approached the Attorney General and the Assistant Attorney General in charge of the Criminal Division and urged them "to review" the indictment. For these services Johnson received substantial sums in the form of a "campaign contribution" and "legal fees." The Government contended, and presumably the jury found, that these payments were never disclosed to the Department of Justice, and that the payments were not bona fide campaign contributions or legal fees, but were made simply to "buy" the Congressmen.

Footnotes at end of article.

The bulk of the evidence submitted as to Johnson dealt with his financial transactions with the other conspirators, and with his activities in the Department of Justice. As to these aspects of the substantive counts and the conspiracy count, no substantial question is before us. 18 U. S. C. § 371 has long been held to encompass not only conspiracies that might involve loss of government funds, but also "any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." *Haas* v. *Henkel,* 216 U.S. 462, 479. No argument is made, nor do we think that it could be successfully contended, that the Speech or Debate Clause reaches conduct, such as was involved in the attempt to influence the Department of Justice, that is no wise related to the due functioning of the legislative process. It is the application of this broad conspiracy statute to an improperly motivated speech that raises the constitutional problem with which we deal.[3]

I

The language of the Speech or Debate Clause clearly proscribes at least some of the evidence taken during trial. Extensive questioning went on concerning how much of the speech was written by Johnson himself, how much by his administrative assistant, and how much by outsiders representing the loan company.[4] The government attorney asked Johnson specifically about certain sentences in the speech, the reasons for their inclusion and his personal knowledge of the factual material supporting those statements.[5] In closing argument the theory of the prosecution was very clearly dependent upon the wording of the speech.[6] In addition to questioning the manner of preparation and the precise ingredients of the speech, the Government inquired into the motives for giving it.[7]

The constitutional infirmity infecting this prosecution is not merely a matter of the introduction of inadmissible evidence. The attention given to the speech's substance and motivation was not an incidental part of the Government's case, which might have been avoided by omitting certain lines of questioning or excluding certain evidence. The conspiracy theory depended upon a showing that the speech was made solely or primarily to serve private interests, and that Johnson in making it was not acting in good faith, that is, that he did not prepare or deliver the speech in the way an ordinary Congressman prepares or delivers an ordinary speech. Johnson's defense quite naturally was that his remarks were no different from the usual congressional speech, and to rebut the prosecution's case he introduced speeches of several other Congressmen speaking to the same general subject, argued that his talk was occasioned by an unfair attack upon savings and loan associations in a Washington, D.C., newspaper, and asserted that the subject matter of the speech dealt with a topic of concern to his State and to his constituents. We see no escape from the conclusion that such an intensive judicial inquiry, made in the course of a prosecution by the Executive Branch under a general conspiracy statute, violates the express language of the Constitution and the policies which underlie it.

II

The Speech or Debate Clause of the Constitution was approved at the Constitutional Convention without discussion and without opposition. See V Elliot's Debates 406 (1836 ed.); II Records of the Federal Convention 246 (Farrand ed. 1911). The present version of the clause was formulated by the Convention's Committee on Style, but the original vote of approval was of a slightly different formulation which repeated almost verbatim the language of Article V of the Articles of Confederation: "Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress. . . ." The language of that Article, of which the present clause is only a slight modification, is in turn almost identical to the English Bill of Rights of 1689: "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess. 2, c. 2.

This formulation of 1689 was the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators.[8] Since the Glorious Revolution in Britain, and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the legislature. See, *e.g.,* Story, Commentaries on the Constitution § 866; II The Works of James Wilson 37–38 (Andrews ed. 1896). In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders. As Madison noted in Federalist No. 48:

"It is agreed on all sides, that the powers properly belonging to one of the departments, ought not to be directly and completely administered by either of the other departments. It is equally evident, that neither of them ought to possess directly or indirectly, an overruling influence over the others in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating therefore in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary; the next and most difficult task, is to provide some practical security for each against the invasion of the others. What this security ought to be, is the great problem to be solved." (Cooke, ed.)

The legislative privilege, protecting against possible prosecution by an unfriendly executive and conviction by a hostile judiciary, is one manifestation of the "practical security" for ensuring the independence of the legislature.

In part because the tradition of legislative privilege is so well established in our polity, there is very little judicial illumination of this clause. Clearly no precedent controls the decision in the case before us. This Court first dealt with the clause in *Kilbourn* v. *Thompson,* 103 U.S. 168, a suit for false imprisonment alleging that the Speaker and several members of the House of Representatives ordered the petitioner to be arrested for contempt of Congress. The Court held first that Congress did not have power to order the arrest, and second that were it not for the privilege, the defendants would be liable. The difficult queston was whether the participation of the defendants in passing the resolution ordering the arrest was "speech or debate." The Court held that the privilege should be read broadly, to include not only "words spoken in debate," but anything "generally done in a session of the House by one of its members in relation to the business before it." 103 U.S. at 204.

In *Tenney* v. *Brandhove,* 341 U.S. at 367, at issue was whether legislative privilege protected a member of the California Legislature against a suit brought under the Civil Rights statute, 8 U.S.C. §§ 43, 47(3) (1946 ed.), alleging that the legislator had used his official forum "to intimidate and silence plaintiff and deter and prevent him from effectively exercising his constitutional rights of free speech and to petition the Legislature for redress of grievances. . . ." 341 U.S. at 371. The Court held a dismissal of the suit proper; it viewed the state legislative privilege as be-

ing on a parity with the similar federal privilege, and concluded that

"The claim of an unworthy purpose does not destroy the privilege. . . . The holding of this Court in *Fletcher* v. *Peck*, 6 Cranch 87, 130, that it was not consonant with our scheme of government for a court to inquire into the motives of leigslators, has remained unquestioned." 351 U.S., at 377.

III

Kilbourn and *Tenney* indicate that the legislative privilege will be read broadly to effectuate its purposes; neither case deals, however, with a criminal prosecution based upon an allegation that a member of Congress abused his position by conspiring to give a particular speech in return for remuneration from private interests. However reprehensible such conduct may be, we believe the Speech or Debate Clause extends at least so far as to prevent it from being made the basis of a criminal charge against a member of Congress of conspiracy to defraud the United States by impeding the due discharge of government functions. The essense of such a charge in this context is that the Congressman's conduct was improperly motivated, and as will appear that is precisely what the Speech or Debate Clause generally forecloses from executive and judicial inquiry.

Even though no English or American case casts bright light on the one before us [9] it is apparent from the history of the clause that the privilege was not born primarily of a desire to avoid private suits such as those in *Kilbourn* and *Tenney*, but rather to prevent intimidation by the executive and accountability before a possibly hostile judiciary. In the notorious proceedings of King Charles I against Eliot, Hollis, and Valentine, 3 How. St. Tr. 294 (1629), the Crown was able to imprison members of Commons on charges of seditious libel and conspiracy to detain the Speaker in the chair to prevent adjournment.[10] Even after the Restoration, as Holdsworth noted, "[t]he law of seditious libel was interpreted with the utmost harshness against those whose political or religious tenets were distasteful to the government." VI Holdsworth, A History of English Law 214 (1927). It was not only fear of the executive that caused concern in Parliament but of the judiciary as well, for the judges were often lackeys of the Stuart monarchs,[11] levying punishment more "to the wishes of the crown than to the * * *

FOOTNOTES

[1] "Whoever, being a Member of or Delegate to Congress, . . . directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any department, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than $10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States."

[2] "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

[3] Only the question of the applicability of the Speech or Debate Clause to the prosecution of Johnson is before us. The Court of Appeals affirmed the convictions of codefendants Edlin and Robinson whose appeals were consolidated with that of Johnson and, except for a brief as *amicus curiae* submitted by Edlin, questions raised in those cases have not been presented to us. The defendant Boykin took no appeal from his conviction.

[4] See direct examination by the prosecution of Martin Heflin, App. 182–191, esp. 189–190:

"Q. What, if anything, did Congressman Johnson do with the material which Mr. Robinson brought in and gave to him? A. As, I recall, Mr. Johnson said that his administrative assistant . . . would go over the material, too and if I am not mistaken, Mr. Johnson called him in and Buarque took the material and I left the office with Mr. Buarque to discuss it some more.

"Q. After that meeting did you at any time thereafter have any contact either with Congressman Johnson or his office with regard to the speech? A. I telephoned a time or two there and I think I was called by Mr. Buarque and asked him about certain figures that the Institute—background material that might be supplied, and I did supply additional material and I believe Mr. Buarque sent me a draft, himself, with certain places, blank places for figures to be filled in. We had a discussion about some of the technical phases [*sic*] and information, statistical information and so forth.

"Q. You supplied some of the facts and figures for the draft that Mr. Buarque sent you? A. Yes.

"Q. What did you do with that draft once you had looked it over? A. Returned it."

See also cross-examination of Manual Buarque, App. 488–494; cross-examination of co-defendant Robinson, App. 772–775; cross-examination of defendant Johnson, Transcript 79–93.

[5] See cross-examination of Johnson, Transcript 84–86:

"Q. And did you not tell Mr. Heflin when he came to see you in your office after that luncheon that he should work with Mr. Buarque on the preparation of the speech which was ultimately given on June 30? A. My statement is the same as it has always been that Mr. Heflin came to my office, representing himself as a public relations man, for a certain institute of Independent Savings and Loan Associations. He had the article of one of the local newspapers. A very unfair attack which he claimed had been made on savings and loans. He talked with me a very short time. I told him that Mr. Buarque, my administrative assistant, did all of my writing, all of the conversations and if there were any answers to be made—he went out with me to the next room, met Mr. Buarque and I left the two together.

"Q. You told him, did you not, that he should work with Mr. Buarque on the matter since Mr. Buarque prepared your speeches? A. I told him at the time to discuss it with Mr. Buarque and any arrangements Mr. Buarque wanted to make, why, he of course, would be cooperative with him.

"Q. Now, you say that at that time—I assume you meant at the time of the speech—that one savings association meant nothing more to you than another. Is that what you referred to? A. Not only then but following the speech, too.

"Q. I believe you testified on direct examination that you did not know the name of First Continental Savings and Loan or First Colony Savings and Loan at the time this speech was delivered on June 30, is that your testimony? A. I think my testimony is that one name did not mean more than another.

"Q. Now, your speech was finally delivered or submitted to the clerk and it was printed in the Congressional Record, and it stresses the value of commercial mortgage guaranty insurance, does it not? A. I think it has a reference to it, yes.

"O. Isn't it a fact that at the time of the speech, First Continental and First Colony were the only independent savings and loan associations in the State of Maryland which carried commercial mortgage guaranty insurance? A. I have no knowledge of that and did not know at the time.

"Q. You have no knowledge of that? A. None, whatever.

"Q. As a matter of fact, the language in your speech, Congressman, was a part of the language which Mr. Edlin emphasized in his reprint, was it not? A. May I say that I did not see any of the so-called 'reprints.' "

And see Transcript 91:

"Q. Congressman, do you mean to tell the jury that Mr. Buarque put that language in the speech about three indicted institutions and none convicted, and you did not inquiries as to which particular institutions they were? A. He did not tell me which they were, the names.

"Q. Well, let me ask you this: How could you, if you did not know which institutions were under indictment, how could you make this statement in your speech:

" 'I personally do not know any of these institutions nor any of the circumstances leading to their respective indictments. I hold no brief for any of them, one way or another.'

"That is the language of your speech, it it not? A. Yes, I said that is the prepared speech which had been testified that Mr. Buarque with some help from Heflin, prepared."

[6] See Oral Argument on behalf of the Government, Transcript 232–248, esp. 244–245:

"I submit to you members of the jury, there is no other logical explanation you can make but that that speech was made solely for the purposes of Mr. Kenneth Edlin. It was a day's work for a day's pay for the man to whom he was selling his Congressional Office and his Congressional influence.

"Congressman Johnson has claimed on the stand in this case that he did not then know that the First Colony Savings and Loan Association was then under indictment.

"Now, you will recall the language in the speech, itself, that out of 400 independent savings and loan associations in Maryland, exactly three of them have been indicted and none convicted.

"['] Personally, I do not know any of these indicted institutions nor any of the circumstances leading to their respective indictments. I hold no brief for any of them one way or the other.[']

"Congressman Johnson claimed under oath, Members of the Jury, that he did not even bother to check the facts to ascertain whether he could truthfully make such a statement in his speech.

"If so, I submit to you, it was utterly and completely irresponsible and reprehensible, but the Government submits that that is not so and that that was not a fact. The Government submits that Congressman Johnson did know at that time that both First Colony and Mr. Edlin were then under indictment in this very Court and that he, nevertheless made those statements in the speech which he delivered on June 30, 1960.

"Those statements, Members of the Jury, the Government submits were completely untrue and deceitful."

[7] See, *e.g.*, cross-examination of Johnson, Transcript 79–81:

"Q. Now, Congressman, you told Mr. Estabrock on December 20, 1961, in London, did you not, that this speech had been made at the urging of several of your own people or of your own constituents? Is that not a fact? A. Which conference are you speaking of with Mr. Estabrook?

"Q. As a matter of fact, then, except for Mr. Buarque, whom you term a constituent, no constituent of yours ever spoke to you about making that speech on the floor of the House of Congress, is that not correct? A. It could be. I do not recall.

"Q. You would be—you would not deny it? A. No.

"Q. Is it not a fact that prior to that speech Congressman, you had never discussed sav-

ings and loan programs or problems with any of your constituents on the Eastern Shore of Maryland? A. Oh, I think possibly I had. I do not know to what degree but I want to say too, that the speech you refer to there was a motivation that Mr. Buarque testified that I was interested in a statewide election for the Senate in 1964."

[8] See generally C. Wittke, The History of English Parliamentary Privilege (Ohio State Univ. 1921); Neale, The Commons' Prilivege of Free Speech in Parliament, in Tudor Studies (Seton-Watson ed. 1924).

[9] Compare *The King* v. *Boston*, 33 Commw. L. R. 386 (Austl. 1923); *The Queen* v. *White*, 13 Sup. Ct. R. 322 (N. S. W. 1875); *Regina* v. *Bunting*, 7 Ont. 524 (1885), for commonwealth cases dealing with the general question of liability of legislators for bribery in distinguishable contexts. See 78 Harv. L. Rev. 1473, 1474.

[10] The court in that case attempted to distinguish between true privilege and unlawful conspiracies:

"And we hereby will not draw the true Liberties of Parliament-men into question; to wit, for such matters which they do or speak in a parliamentary manner. But in this case there was a conspiracy between the Defendants to slander the state, and to raise sedition and discord between the king, his peers, and people; and this was not a parliamentary course.

"That every one of the Defendants shall be imprisoned during the king's pleasure: Sir John Elliot to be imprisoned in the Tower of London, and the other Defendants in other prisons." 3 How. St. Tr., at 310.

See the account in Taswell-Langmead's English Constitutional History (Plucknett ed. 1960), at 376–378. After the Restoration, some 38 years after the trial, Parliament resolved that the judgment "was an illegal judgment, and against the freedom and privilege of Parliament." The House of Lords reversed the convictions in 1668. See Taswell-Langmead, *supra*, at 378, note 55.

[11] See Holdsworth, *supra*, at 503–511.

EXHIBIT 4

(Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit)

POWELL ET AL. *v.* MCCORMACK, SPEAKER OF THE HOUSE OF REPRESENTATIVES, ET AL.

No. 138. Argued April 21, 1969—Decided June 16, 1969

(Excerpts)

Petitioner Powell, who had been duly elected to serve in the House of Representatives for the 90th Congress, was denied his seat by the adoption of House Resolution No. 278 which the Speaker had ruled was on the issue of excluding Powell and could be decided by majority vote. The House's action followed charges that Powell had misappropriated public funds and abused the process of the New York courts. Powell and certain voters of his congressional district thereafter brought suit in the District Court for injunctive, mandatory, and declaratory relief against respondents, certain named House members, the Speaker, Clerk, Sergeant at Arms, and Doorkeeper of the House, alleging that the Resolution barring his seating violated Art. I. § 2, cl. 1; of the Constitution as contrary to the mandate that House members be elected by the people of each State and cl. 2 which sets forth the qualifications for membership of age, citizenship, and residence (all concededly met by Powell), which they claimed were exclusive. The complaint alleged that the House Clerk threatened to refuse to perform the service to which Powell as a duly elected Congressman was entitled; that the Sergeant at Arms refused to pay Powell's salary; and that the Doorkeeper threatened to deny Powell admission to the House chamber. The District Court granted respondents' motion to dismiss the complaint "for want of jurisdiction of the subject matter." The Court of Appeals affirmed on somewhat different grounds. While the case was pending in this Court, the 90th Congress ended and Powell was elected to and seated by the 91st Congress. Respondents contend that (1) the case is moot; (2) the Speech or Debate Clause (Art. I, § 6) forecloses judicial review; (3) the decision to exclude Powell is supported by the expulsion power in Art. I, § 5, under which the House which "shall be the Judge of the . . . Qualifications of its own Members," can by a two-thirds vote (exceeded here) expel a member for any reason at all; (4) the Court lacks subject matter jurisdiction over this litigation, or, alternatively, (5) the litigation is not justiciable under general criteria or because it involves a political question. *Held:*

1. The case has not been mooted by Powell's seating in the 91st Congress, since his claim for back salary remains a viable issue. Pp. 495–500.

(a) Powell's averments as to declaratory relief are sufficient *Alejandrino* v. *Quezon*, 271 U.S. 528, distinguished. Pp. 496–499.

(b) The mootness of Powell's claim to a seat in the 90th Congress does not affect the viability of his back salary claim with respect to the term for which he was excluded. *Bond* v. *Floyd*, 385 U.S. 116. Pp. 499–500.

2. Although the Speech or Debate Clause bars action against respondent Congressmen, it does not bar action against the other respondents, who are legislative employees charged with unconstitutional activity, *Kilbourn* v. *Thompson*, 103 U.S. 168; *Dombrowski* v. *Eastland*, 387 U.S. 82; and the fact that House employees are acting pursuant to express orders of the House does not preclude judicial review of the constitutionality of the underlying legislative decision. Pp. 501–506.

3. House Resolution No. 278 was an exclusion proceeding and cannot be treated as an expulsion proceeding (which House members have viewed as not applying to pre-election misconduct). This Court will not speculate whether the House would have voted to expel Powell had it been faced with that question. Pp. 506–512.

4. The Court has subject matter jurisdiction over petitioners' action. Pp. 512–516.

(a) The case is one "arising under" the Constitution within the meaning of Art. III, since petitioners' claims "will be sustained if the Constitution . . . [is] given one construction and will be defeated if it [is] given another." *Bell* v. *Hood*, 327 U.S. 678. Pp. 513–514.

(b) The district courts are given a broad grant of jurisdiction by 28 U.S.C. § 1331(a), over "all civil actions wherein the matter in controversy . . . arises under the Constitution . . ." and while that grant is not entirely co-extensive with Art. III, there is no indication that § 1331(a) was intended to foreclose federal courts from entertaining suits involving the seating of Congressmen. Pp 514–516.

5. This litigation is justiciable because the claim presented and the relief sought can be judicially resolved. Pp. 516–518.

(a) Petitioners' claim does not lack justiciability on the ground that the House's duty cannot be judicially determined, since if petitioners are correct the House had a duty to seat Powell once it determined that he met the standing qualifications set forth in the Constitution. P. 517.

(b) The relief sought is susceptible to judicial resolution, since regardless of the appropriateness of a coercive remedy against House personnel (an issue not here decided) declaratory relief is independently available. Pp. 517–518.

6. The case does not involve a "political question," which under the separation-of-powers doctrine would not be justiciable. Pp. 518–549.

(a) The Court's examination of relevant historical materials shows at most that Congress' powers under Art. I, § 5, to judge the "Qualifications of its Members" is a "textually demonstrable constitutional commitment . . . to [that] co-ordinate political department of government" (*Baker* v. *Carr*, 369 U.S. 186, 217) to judge only standing qualifications which are expressly set forth in the Constitution; hence, the House has no power to exclude a member-elect who meets the Constitution's membership requirements. Pp. 518–548.

(b) The case does not present a political question in the sense, also urged by respondents, that it would entail a "potentially embarrassing confrontation between coordinate branches" of the Government, since our system of government requires federal courts on occasion to interpret the Constitution differently from other branches. Pp. 548–549.

7. In judging the qualifications of its members under Art. I, § 5, Congress is limited to the standing qualifications expressly prescribed by the Constitution. P. 550.

129 U.S. App. D.C. 354, 395 F. 2d 577, affirmed in part, reversed in part, and remanded to the District Court for entry of a declaratory judgment and for further proceedings.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

In November 1966, petitioner Adam Clayton Powell, Jr., was duly elected from the 18th Congressional District of New York to serve in the United States House of Representatives for the 90th Congress. However, pursuant to a House resolution, he was not permitted to take his seat. Powell (and some of the voters of his district) then filed suit in Federal District Court, claiming that the House could exclude him only if it found he failed to meet the standing requirements of age, citizenship, and residence contained in Art. I, § 2, of the Constitution—requirements the House specifically found Powell met—and thus had excluded him unconstitutionally. The District Court dismissed petitioners' complaint "for want of jurisdiction of the subject matter." A panel of the Court of Appeals affirmed the dismissal, although on somewhat different grounds, each judge filing a separate opinion. We have determined that it was error to dismiss the complaint and that petitioner Powell is entitled to a declaratory judgment that he was unlawfully excluded from the 90th Congress.

I. FACTS

During the 89th Congress, a Special Subcommittee on Contracts of the Committee on House Administration conducted an investigation into the expenditures of the Committee on Education and Labor, of which petitioner Adam Clayton Powell, Jr., was chairman. The Special Subcommittee issued a report concluding that Powell and certain staff employees had deceived the House authorities as to travel expenses. The report also indicated there was strong evidence that certain illegal salary payments had been made to Powell's wife at his direction. See H.R. Rep. 2349, 89th Cong., 2d Sess., 6–7 (1966). No formal action was taken during the 89th Congress. However, prior to the organization of the 90th Congress, the Democratic members-elect met in caucus and voted to remove Powell as chairman of the Committee on Education and Labor. See H.R. Rep. No. 27, 90th Cong., 1st Sess., 1–2 (1967).

When the 90th Congress met to organize in January 1967, Powell was asked to step aside while the oath was administered to the other members-elect. Following the administration of the oath to the remaining members, the House discussed the procedure to be followed in determining whether Powell was eligible to take his seat. After some debate, by a vote of 363 to 65 the House adopted House Resolution No. 1, which provided that the Speaker appoint a Select Committee to determine Powell's eligibility. Cong. Rec. vol. 113, pt. 1, pp. 26–27. Although the resolution

prohibited Powell from taking his seat until the House acted on the Select Committee's report, it did provide that he should receive all the pay and allowances due a member during the period.

The Select Committee, composed of nine lawyer-members, issued an invitation to Powell to testify before the Committee. The invitation letter stated that the scope of the testimony and investigation would include Powell's qualifications as to age, citizenship, and residency; his involvement in a civil suit (in which he had been held in contempt); and "[m]atters of . . . alleged official misconduct since January 3, 1961." See Hearings on H. R. Res. No. 1 before Select Committee Pursuant to H. R. Res. No. 1 90th Cong., 1st Sess., 5 (1967) (hereinafter Hearings). Powell appeared at the Committee hearing held on February 8, 1967. After the Committee denied in part Powell's request that certain adversary-type procedures be followed,[1] Powell testified. He would, however, give information relating only to his age, citizenship, and residency; upon the advice of counsel, he refused to answer other questions.

On February 10, 1967, the Select Committee issued another invitation to Powell. In the letter, the Select Committee informed Powell that its responsibility under the House Resolution extended to determining not only whether he met the standing qualifications of Art. I, § 2, but also to "inquir[ing] into the question of whether you should be punished or expelled pursuant to the powers granted . . . the House under Article I, Section 5, . . . of the Constitution. In other words, the Select Committee is of the opinion that at the conclusion of the present inquiry, it has authority to report back to the House recommendations with respect to . . . seating, expulsion or other punishment." See Hearings 110. Powell did not appear at the next hearing, held February 14, 1967. However, his attorneys were present, and they informed the Committee that Powell would not testify about matters other than his eligibility under the standing qualifications of Art. I, § 2. Powell's attorneys reasserted Powell's contention that the standing qualifications were the exclusive requirements for membership, and they further urged that punishment or expulsion was not possible until a member had been seated. See Hearings 111–113.

The Committee held one further hearing at which neither Powell nor his attorneys were present. Then, on February 23, 1967, the Committee issued its report, finding that Powell met the standing qualifications of Art. I, § 2. H.R. Rep. No. 27, Cong. Rec. vol. 113, pt. 1, pp. 28–33. However, the Committee further reported that Powell had asserted an unwarranted privilege and immunity from the processes of the courts of New York; that he had wrongfully diverted House funds for the use of others and himself; and that he had made false reports on expenditures of foreign currency to the Committee on House Administration. *Id.*, at 31–32. The Committee recommended that Powell be sworn and seated as a member of the 90th Congress but that he be censured by the House, fined $40,000 and be deprived of his seniority. *Id.*, at 33.

The report was presented to the House on March 1, 1967, and the House debated the Select Committee's proposed resolution. At the conclusion of the debate, by a vote of 222 to 202 the House rejected a motion to bring the resolution to a vote. An amendment to the resolution was then offered; it called for the exclusion of Powell and a declaration that his seat was vacant. The Speaker ruled that a majority vote of the House would be sufficient to pass the resolution if it were so amended. Cong. Rec. vol 113, pt. 4, p. 5020. After further debate, the amendment was adopted by a vote of 248 to 176. Then the House adopted by a vote of 307 to 116 House resolution No. 278 in its amended form, thereby excluding Powell and directing that the Speaker notify the Governor of New York that the seat was vacant.

Powell and 13 voters of the 18th Congressional District of New York subsequently instituted this suit in the United States District Court for the District of Columbia. Five members of the House of Representatives were named as defendants individually and "as representatives of a class of citizens who are presently serving . . . as members of the House of Representatives." John W. McCormack was named in his official capacity as Speaker, and the Clerk of the House of Representatives, the Sergeant at Arms and the Doorkeeper were named individually and in their official capacities. The complaint alleged that House Resolution No. 278 violated the Constitution, specifically Art. I, § 2, cl. 1, because the resolution was inconsistent with the mandate that the members of the House shall be elected by the people of each State, and Art. I, § 2, cl. 2, which, petitioners alleged, sets forth the exclusive qualifications for membership.[2] The complaint further alleged that the Clerk of the House threatened to refuse to perform the service for Powell to which a duly elected Congressman is entitled, that the Sergeant at Arms refused to pay Powell his salary, and that the Doorkeeper threatened to deny Powell admission to the House chamber.

Petitioners asked that a three-judge court be convened.[3] Further, they requested that the District Court grant a permanent injunction restraining respondents from executing the House Resolution, and enjoining the Speaker from refusing to administer the oath, the Clerk from refusing to perform the duties due a Representative, the Sergeant at Arms from refusing to pay Powell his salary, and the Doorkeeper from refusing to admit Powell to the Chamber.[4] The complaint also requested a declaratory judgment that Powell's exclusion was unconstitutional.

The District Court granted respondents' motion to dismiss the complaint "for want of jurisdiction of the subject matter." *Powell* v. *McCormack*, 266 F. Supp. 354 (D. C. D. C. 1967).[5] The Court of Appeals for the District of Columbia Circuit affirmed on somewhat different grounds, with each judge of the panel filing a separate opinion. *Powell* v. *McCormack*, 129 U.S. App. D.C. 354, 395 F. 2d 577 (1968). We granted certiorari. 393 U.S. 949 (1968). While the case was pending on our docket, the 90th Congress officially terminated and the 91st Congress was seated. In November 1968, Powell was again elected as the representative of the 18th Congressional District of New York and he was seated by the 91st Congress. The resolution seating Powell also fined him $25,000. See H.R. Res. No. 2, Cong. Rec. vol. 115, pt. 1, pp. 15–34. Respondents then filed a suggestion of mootness. We postponed further consideration of this suggestion to a hearing on the merits. 393 U.S. 1060 (1969).

Respondents press upon us a variety of arguments to support the court below; they will be considered in the following order. (1) Events occurring subsequent to the grant of certiorari have rendered this litigation moot. (2) The Speech or Debate Clause of the Constitution, Art. I, § 6, insulates respondents' action from judicial review. (3) The decision to exclude petitioner Powell is supported by the power granted to the House of Representatives to expel a member. (4) This Court lacks subject matter jurisdiction over petitioners' action. (5) Even if subject matter jurisdiction is present, this litigation is not justiciable either under the general criteria established by this Court or because a political question is involved.

* * * * *

III. SPEECH OR DEBATE CLAUSE

Respondents assert that the Speech or Debate Clause of the Constitution, Art. I, § 6,[17] is an absolute bar to petitioners' action. This Court has on four prior occasions—*Dombrowski* v. *Eastland*, 387 U.S. 82 (1967); *Tenney* v. *Brandhove*, 341 U.S. 367 (1951); and *Kilbourn* v. *Thompson*, 103 U.S. 168 (1881)—been called upon to determine if allegedly unconstitutional action taken by legislators or legislative employees is insulated from judicial review by the Speech or Debate Clause. Both parties insist that their respective positions find support in these cases and tender for decision three distinct issues: (1) whether respondents in participating in the exclusion of petitioner Powell were "acting in the sphere of legitimate legislative activity," *Tenney* v. *Brandhove*, *supra*, at 376; (2) assuming that respondents were so acting, whether the fact that petitioners seek neither damages from any of the respondents nor a criminal prosecution lifts the bar of the clause;[18] and (3) even if this action may not be maintained against a Congressman, whether those respondents who are merely employees of the House may plead the bar of the clause. We find it necessary to treat only the last of these issues.

The Speech or Debate Clause, adopted by the Constitutional Convention without debate or opposition,[19] finds its roots in the conflict between Parliament and the Crown culminating in the Glorious Revolution of 1688 and the English Bill of Rights of 1869.[20] Drawing upon this history, we concluded in *United States v. Johnson*, *supra*, at 181, that the purpose of this clause was "to prevent intimidation [of legislators] by the executive and accountability before a possibly hostile judiciary." Although the clause sprang from a fear of seditious libel actions instituted by the Crown to punish unfavorable speeches made in Parliament,[21] we had held that it would be a "narrow view" to confine the protection of the Speech or Debate Clause to words spoken in debate. Committee reports, resolutions, and the act of voting are equally covered, as are "things generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn* v. *Thompson*, *supra*, at 204. Furthermore, the clause not only provides a defense on the merits but also protects a legislator from the burden of defending himself. *Dombrowski* v. *Eastland*, *supra*, at 85; see *Tenney* v. *Brandhove*, *supra*, at 377.

Our cases make it clear that the legislative immunity created by the Speech or Debate Clause performs an important function in representative government. It insures that legislators are free to represent the interests of their constituents without fear that they will be later called to task in the courts for that representation. Thus, in *Tenney* v. *Brandhove*, *supra*, at 373, the Court quoted the writings of James Wilson as illuminating the reason for legislative immunity: "In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offence."[22]

Legislative immunity does not, of course, bar all judicial review of legislative acts. That issue was settled by implication as early as 1803, see *Marbury* v. *Madison*, 1 Cranch 137, and expressly in *Kilbourn* v. *Thompson*, the first of this Court's cases in interpreting the reach of the Speech or Debate Clause. Challenged in *Kilbourn* was the constitutionality of a House Resolution or-

Footnotes at end of article.

Footnote at end of table.

dering the arrest and imprisonment of a recalcitrant witness who had refused to respond to a subpoena issued by a House investigating committee. While holding that the Speech or Debate Clause barred Kilbourn's action for false imprisonment brought against several members of the House, the Court nevertheless reached the merits of Kilbourn's attack and decided that, since the House had no power to punish for contempt, Kilbourn's imprisonment pursuant to the resolution was unconstitutional. It therefore allowed Kilbourn to bring his false imprisonment action against Thompson, the House's Sergeant at Arms, who had executed the warrant for Kilbourn's arrest.

The Court first articulated in *Kilbourn* and followed in *Dombrowski* v. *Eastland*[23] the doctrine that, although an action against a Congressman may be barred by the Speech or Debate Clause, legislative employees who participated in the unconstitutional activity are responsible for their acts. Despite the fact that petitioners brought this suit against several House employees—the Sergeant at Arms, the Doorkeeper and the Clerk—as well as several Congressmen, respondents argue that *Kilbourn* and *Dombrowski* are distinguishable. Conceding that in *Kilbourn* the presence of the Sergeant at Arms and in *Dombrowski* the presence of a congressional subcommittee counsel as defendants in the litigation allowed judicial review of the challenged congressional action, respondents urge that both cases concerned an affirmative act performed by the employee outside the House having a direct effect upon a private citizen. Here, they continue, the relief sought relates to actions taken by House agents solely within the House. Alternatively, respondents insist that Kilbourn and Dombrowski prayed for damages while petitioner Powell asks that the Sergeant at Arms disburse funds, an assertedly greater interference with the legislative process. We reject the proffered distinctions.

That House employees are acting pursuant to express orders of the House does not bar judicial review of the constitutionality of the underlying legislative decision. *Kilbourn* decisively settles this question, since the Sergeant at Arms was held liable for false imprisonment even though he did nothing more than execute the House Resolution that Kilbourn be arrested and imprisoned.[24] Respondents' suggestions thus ask us to distinguish between affirmative acts of House employees and situations in which the House orders its employees not to act or between actions for damages and claims for salary. We can find no basis in either the history of the Speech or Debate Clause or our cases for either distinction. The purpose of the protection afforded legislators is not to forestall judicial review of legislative action but to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions. A legislator is no more or no less hindered or distracted by litigation against a legislative employee calling into question the employee's affirmative action than he would be by a lawsuit questioning the employee's failure to act. Nor is the distraction or hindrance increased because the claim is for salary rather than damages, or because the litigation questions action taken by the employee within rather than without the House. Freedom of legislative activity and the purposes of the Speech or Debate Clause are fully protected if legislators are relieved of the burden of defending themselves.[25] In *Kilbourn* and *Dombrowski* we thus dismissed the action against members of Congress but did not regard the Speech or Debate Clause as a bar to reviewing the merits of the challenged congressional action since congressional employees were also sued. Similarly, though this action may be dismissed against the Congressmen petitioners are entitled to maintain their action against House employees and to judicial review of the propriety of the decision to exclude petitioner Powell.[26] As was said in *Kilbourn*, in language which time has not dimmed:

"Especially is it competent and proper for this court to consider whether its [the legislature's] proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void." 103 U.S., at 199.

FOOTNOTES

[1] Powell requested that he be given (1) notice of the charges pending against him, including a bill of particulars as to any accuser; (2) the opportunity to confront any accuser, to attend all committee sessions where evidence was given, and the right to cross-examine all witnesses; (3) public hearings; (4) the right to have the Select Committee issue its process to summon witnesses for his defense; (5) and a transcript of every hearing. Hearings on H.R. Res. No. 1 before Select Committee Pursuant to H.R. Res. No. 1, 90th Cong., 1st Sess., 54 (1967).

The Select Committee noted that it had given Powell notice of the matters it would inquire into, that Powell had the right to attend all hearings (which would be public) with his counsel, and that the Committee would call witnesses upon Powell's written request and supply a transcript of the hearings. *Id.*, at 59.

[2] The complaint also attacked the House Resolution as a bill of attainder, an *ex post facto* law, and as cruel and unusual punishment. Further, petitioners charged that the hearing procedures adopted by the Select Committee violated the Due Process Clause of the Fifth Amendment.

[3] The District Court refused to convene a three-judge court and the Court of Appeals affirmed. Petitioners did not press this issue in their petition for writ of certiorari, apparently recognizing the validity of the Court of Appeals' ruling. See *Stamler* v. *Willis*, 393 U.S. 217 (1968).

[4] Petitioners also requested that a writ of mandamus issue ordering that the named officials perform the same acts.

[5] The District Court entered its order April 7, 1967, and a notice of appeal was filed the same day. On April 11, 1967, Powell was reelected to the House of Representatives in a special election called to fill his seat. The formal certification of election was received by the House on May 1, 1967, but Powell did not again present himself to the House or ask to be given the oath of office.

* * * * *

[17] Article I, § 6, provides: "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other Place."

[18] Petitioners ask the Court to draw a distinction between declaratory relief sought against members of Congress and either an action for damages or a criminal prosecution, emphasizing that our four previous cases concerned "criminal or civil sanctions of a deterrent nature." Brief for Petitioners 171.

[19] See 5 Debates on the Federal Constitution 406 (J. Elliot ed. 1876); 2 Records of the Federal Convention of 1787, p. 246 (M. Farrand rev. ed 1966) (hereinafter cited as Farrand).

[20] The English Bill of Rights contained a provision substantially identical to Art. I, § 6: "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess. 2, c. 2. The English and American colonial history is traced in some detail in Cella, The Doctrine of Legislative Privilege of Freedom of Speech and Debate: Its Past, Present and Future as a Bar to Criminal Prosecutions in the Courts, 2 Suffolk U.L. Rev. 1, 3–16 (1968), and Yankwich, The Immunity of Congressional Speech—Its Origin, Meaning and Scope, 99 U. Pa. L. Rev. 960, 961–966 (1951).

[21] *United States* v. *Johnson*, 383 U.S. 169, 182–183 (1966).

[22] 1 The Works of James Wilson 421 (R. McCloskey ed. 1967).

[23] In *Dombrowski* $500,000 in damages was sought against a Senator and the chief counsel of a Senate Subcommittee chaired by that Senator. Record in No. 118. O. T. 1966, pp. 10–11. We affirmed the grant of summary judgment as to the Senator but reversed as to subcommittee counsel.

[24] The Court in *Kilbourn* quoted extensively from *Stockdale* v. *Hansard*, 9 Ad. & E. 1, 114, 112 Eng. Rep. 1112, 1156 (Q.B. 1839), to refute the assertion that House agents were immune because they were excuting orders of the House: [I]f the Speaker, by authority of the House, order an illegal Act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship-money could justify his revenue officer." Kilbourn eventually recovered $20,000 against Thompson. See *Kilbourn v. Thompson*, MacArth. & M. 401, 432 (Sup. Ct. D.C. 1883).

[25] A Congressman is not by virtue of the Speech or Debate Clause absolved of the responsibility of filing a motion to dismiss and the trial court must still determine the applicability of the clause to plaintiff's action. See *Tenney* v. *Brandhove*, 341 U.S. 367, 377 (1951).

[26] Given our disposition of this issue, we need not decide whether under the Speech or Debate Clause petitioners would be entitled to maintain this action solely against members of Congress where no agents participated in the challenged action and no other remedy was available. Cf. *Kilbourn* v. *Thompson*, 103 U.S. 168, 204–205 (1881).

EXHIBIT 5

COCHRAN *v.* COUZENS, No. 4934

[Court of Appeals of District of Columbia, Argued May 6, 1930, Decided June 2, 1930]

1. Libel and slander—37.

Defamatory words uttered during speech in United States Senate chamber *held* absolutely privileged, notwithstanding allegations they were not spoken in discharge of Senator's official duties (Const. art. 1, § 6).

"The declaration alleged that defendant Senator did in the chamber of the Senate of the United States, in the course of a speech, but not in the course of a debate, unofficially, and not in discharge of his official duties as a Senator, and concerning subject not then pertinent or relevant to any matter under inquiry by said Senator, maliciously, falsely, and wrongfully speak, publish, and declare concerning plaintiff and of plaintiff's conduct in his profession the alleged slander therein set out. The averment that such words were spoken unofficially and not in discharge of defendant's official duties as Senator were a mere conclusion and entirely qualified by averment that they were uttered in the course of a speech, in Senate chamber."

2. United States—12.

Constitutional provision that Congressmen shall not be questioned for any speech or debate in either House should be liberally construed (Const. art. 1, § 6).

"Const. art. 1, § 6, provides that in all cases, except treason, felony, and breach of the peace, Senators and Representatives shall be

privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same, an for any speech or debate in either House they shall not be questioned in any other place."

Appeal from the Supreme Court of the District of Columbia.

Action by Howe P. Cochran against James Couzens. Judgment for defendant, and plaintiff appeals.

Affirmed.

Harry Friedman, of Washington, D. C., for appellant.

F. D. Jones and Joseph E. Davies, both of Washington, D. C., for appellee.

Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices.

Appeal from a judgment in the Supreme Court of the District, in an action for slander, sustaining defendant's (appellee here) motion to dismiss for want of jurisdiction.

[1] The declaration discloses that on the 12th of April, 1928, plaintiff was a tax consultant engaged in the practice of his profession in the District of Columbia, and that defendant was a United States Senator from the state of Michigan in attendance upon the meetings of the first session of the Seventieth Congress of the United States; that in 1919 defendant sold a portion of the capital stock of the Ford Motor Company which he long had owned, and filed an income tax return with the Bureau of Internal Revenue charging himself with the accruing profit; that prior to such sale a valuation as of March 1, 1913, had been placed on the stock by the then Commissioner of Internal Revenue, upon which valuation the defendant had computed his profit; that on the 12th of March, 1925, the then Commissioner of Internal Revenue assessed the defendant and other holders of such stock an additional tax liability, based upon a valuation of the stock as of March 1, 1913, different from that fixed in the earlier valuation; that the additional tax liability approximated the sum of $30,000,000; that from this assessment an appeal was prosecuted before the United States Board of Tax Appeals; that thereafter the plaintiff consulted with the defendant on two occasions; and that the defendant did "in the chamber of the Senate of the United States * * * in the course of a speech but not in the course of a debate on the floor of the Senate * * * unofficially and not in the discharge of his official duties as a Senator of the United States * * * of and concerning a subject not then and there pertinent or relevant to any matter under inquiry by the said Senate of the United States, maliciously, willfully, falsely and wrongfully speak, publish and declare of and concerning the plaintiff and of and concerning the conduct of the plaintiff in his said profession and vocation, the following false, scandalous, malicious and defamatory slander to wit."

The alleged slanderous words were to the effect that defendant, after being approached by plaintiff, had secured information that plaintiff "was quite well known around Washington as being one of the men who knew the inside tax game"; that he was a close friend of an employee of the Internal Revenue Bureau, and that the defendant had his secretary telephone plaintiff that he (defendant) was not interested in the matter; that plaintiff persisted and went to the office of defendant the following day, and was asked by defendant what interest the above-mentioned employee had in the case. Plaintiff admitted that he had conferred with this employee about plaintiff's proposition to defendant; that thereupon the defendant dismissed plaintiff, and thereafter wrote the Commissioner of Internal Revenue concerning plaintiff's activities in the case. The Senator then said he desired to emphasize what he considered a perfectly logical conclusion—of his stock, and that no one else outside of that plaintiff knew of the earlier action of the Bureau with reference to the valuation the Department had such knowledge; that "it is apparent that this information was to be delivered to me if I would arrange to pay 5 per cent on some thirty million of assessments made against my associates and myself. In other words, this former clerk who had inside information of the bureau was to obtain a fee of about $1,500,000 for his services."

Article 1, § 6, of the Constitution, provides that in all cases, except treason, felony, and breach of the peace, Senators and Representatives shall "be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place."

"[2] It is manifest that the framers of the Constitution were of the view that it would best serve the interests of all the people if members of the House and Senate were permitted unlimited freedom in speeches or debates. The provision to that end is, therefore, grounded on public policy, and should be liberally construed. Presumably legislators will be restrained in the exercise of such a privilege by the responsibilities of their office. Moreover, in the event of their failure in that regard, they will be subject to discipline by their colleagues. (Article 1, § 5.)

"In Kilbourn v. Thompson, 103 U.S. 168, 26 L. Ed. 377, the court considered whether a resolution offered by a member is a speech or debate within the meaning of article I, § 6, and whether the report made to the House and the vote in favor of a resolution are within its protection. The court said (page 201 of 103 U.S.): "If these questions be answered in the affirmative, they cannot be brought in question for their action in a court of justice or in any other place. And yet if a report, or a resolution, or a vote is not a speech or debate, of what value is the constitutional protection?"

The court then observed that, while the framers of our Constitution did not adopt the lex et consuetudo of the English Parliament as a whole, "they did incorporate such parts of it, and with it such privileges of Parliament, as they thought proper to be applied to the two Houses of Congress."

The court then quoted from the opinion of Lord Denman in Stockdale v. Hansard, 9 Ad. & E. 1, as follows: "The privilege of having their debates unquestioned, though denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. * * *"

The court then observed: "Taking this to be a sound statement of the legal effect of the Bill of Rights and of the parliamentary law of England, it may be reasonably inferred that the framers of the Constitution meant the same thing by the use of language borrowed from that source."

The court then reviewed American decisions, including Coffin v. Coffin, 4 Mass. 1, 3 Am. Dec. 189, relied upon by appellant, and concluded: "It seems to us that the views expressed in the authorities we have cited are sound and are applicable to this case. It would be a narrow view of the constitutional provision to limit it to words spoken in debate. The reason of the rule is as forcible in its application to written reports presented in that body by its committees, to resolutions offered, which, though in writing, must be reproduced in speech, and to the act of voting, whether it is done vocally or by passing between the tellers. In short, to things generally done in a session of the House by one of its members in relation to the business before it."

(We regard the decision in Kilbourn v. Thompson as controlling here. Under the declaration the words forming the basis of plaintiff's action were uttered in the course of a speech in the chamber of the Senate of the United States, and were absolutely privileged and not subject to "be questioned in any other place." The averment that these words were spoken "unofficially and not in the discharge of his official duties as a Senator" is a mere conclusion and entirely qualified by the averment that they were uttered in the course of a speech.)

Judgment affirmed, with costs.

Affirmed.

EXHIBIT 6

[Certiorari to the U.S. Court of Appeals for the District of Columbia Circuit]

DOMBROWSKI ET AL. *v.* EASTLAND ET AL.

No. 118. Argued February 20, 1967.—Decided May 15, 1967

Petitioners claim that respondents, Chairman of the Internal Security Subcommittee of the U.S. Senate Judiciary Committee and the Subcommittee's chief counsel, tortiously entered into and participated in a conspiracy with Louisiana officials to seize petitioners' property and records in violation of the Fourth Amendment. Louisiana courts held the arrests and searches illegal. Here, the court below, while recognizing difficulty in concluding that there were no disputed issues of fact respecting petitioners' claim, upheld summary dismissal of the action on the ground of respondents' legislative immunity. *Held:* Since there is no evidence of the respondent Chairman's "involvement in any activity that could result in liability," the complaint as to him was properly dismissed. The doctrine of legislative immunity protects "legislators engaged 'in the sphere of legitimate legislative activity,' . . . not only from the consequences of litigation's results but also from the burden of defending themselves." However, the doctrine of legislative immunity is less absolute when applied to officers or employees of legislative bodies. There is a sufficient factual dispute with respect to the alleged participation in the conspiracy of the subcommittee's chief counsel to require that a trial be had. The legal consequences of such participation, if it occurred, cannot be determined prior to the factual refinement of trial. The judgment below is therefore reversed as to the subcommittee's chief counsel.

123 U.S. App. D.C. 190, 358 F. 2d 821, affirmed in part and reversed and remanded in part.

Arthur Kinoy argued the cause for petitioners. With him on the brief was *William M. Kunstler*.

Roger Robb argued the cause for respondents. With him on the brief were *Solicitor General Marshall, Assistant Attorney General Sanders* and *David L. Rose*.

PER CURIAM.

The Court of Appeals for the District of Columbia Circuit sustained the order granting summary judgment to the respondents who are, respectively, the Chairman and counsel of the Internal Security Subcommittee of the Judiciary Committee of the United States Senate. Petitioners' claim is essentially that respondents tortiously entered into and participated in a conspiracy and concert of action with Louisiana officials to seize property and records of petitioners by unlawful means in violation of petitioners' Fourth Amendment rights.

The circumstances of the searches and arrests involved are set forth in *Dombrowski* v. *Pfister*, 380 U. S. 479 (1965), and in Judge Wisdom's dissenting opinion in the District Court in that case, 227 F. Supp. 556, 573 (D. C. E. D. La. 1964). Louisiana courts held the arrests and searches illegal because the

warrants secured by the police had not been supported by a showing of probable cause. In a civil suit by these same petitioners against the Louisiana officials allegedly involved in the conspiracy, the Court of Appeals for the Fifth Circuit, reversing a summary judgment in favor of third-party defendants, held that plaintiffs had raised a genuine issue of material fact whether the Chairman "and the other members of the [State] Committee were 'acting in the sphere of *legitimate* legislative activity,' which would entitle them to immunity." *Pfister* v. *Arceneaux*, 376 F. 2d 821.

In the present case, the court below recognized "considerable difficulty" in reaching the conclusion that, on the basis of the affidavits of the parties, there were no disputed issues of fact with respect to petitioners' claim. It nevertheless upheld summary dismissal of the action on the ground that "the record before the District Court contained unchallenged facts of a nature and scope sufficient to give [respondents] an immunity against answerability in damages. . . ." In support of this conclusion the court addressed itself to only that part of petitioners' claims which related to the takeover of the records by respondents *after* the "raids." As to this, it held that the subject matter of the seized records was within the jurisdiction of the Senate Subcommittee and that the issuance of subpoenas to the Louisiana committee to obtain the records held by it was validated by subsequent Subcommittee ratification. On this basis, the court held that the acts for which petitioners seek relief were privileged, citing *Tenney* v. *Brandhove*, 341 U.S. 367 (1951).

The court did not specifically comment upon petitioners' contention that the record shows a material dispute of fact as to their claim that respondent Sourwine actively collaborated with counsel to the Louisiana committee in making the plans for the allegedly illegal "raids" pursuant to the claimed authority of the Louisiana committee and on its behalf, in which petitioners claim that their property and records were seized in violation of their Fourth Amendment rights. In the absence of the factual refinement which can occur only as a result of trial, we need not and, indeed, could not express judgment as to the legal consequences of such collaboration, if it occurred.

There is controverted evidence in the record, such as the date appearing on certain documents which respondents' evidence disputes as a typographical error, which affords more than merely colorable substance to petitioners' assertions as to respondent Sourwine. We make no comment as to whether this evidence standing alone would be sufficient to support a verdict in petitioners' favor against respondent Sourwine, or would require a verdict in his favor. But we believe that, as against an employee of the committee, this showing is sufficient to entitle petitioners to go to trial. In respect of respondent Eastland, we agree with the lower courts that petitioners' complaint must be dismissed. The record does not contain evidence of his involvement in any activity that could result in liability. It is the purpose and office of the doctrine of legislative immunity, having its roots as it does in the Speech or Debate Clause of the Constitution, *Kilbourn* v. *Thompson*, 103 U.S. 168, 204 (1881), that legislators engaged "in the sphere of legitimate legislative activity," *Tenney* v. *Brandhove*, *supra*, 341 U.S., at 376, should be protected not only from the consequences of litigation's results but also from the burden of defending themselves. This Court has held, however, that this doctrine is less absolute, although applicable, when applied to officers or employees of a legislative body, rather than to legislators themselves. As the Court said in *Tenney* v. *Brandhove*, *supra*, the doctrine, in respect of a legislator, "deserves greater respect than where an official acting on behalf of the legislature is sued . . ."* (341 U.S., at 378.) Cf. *Wheeldin* v. *Wheeler*, 373 U.S. 647 (1963). In light of this principle, we are compelled to hold that there is a sufficient factual dispute with respect to respondent Sourwine to require reversal of the judgment below as to him.

Accordingly, we affirm the order of the Court of Appeals as to respondent Eastland and reverse and remand to the District Court as to respondent Sourwine for further proceedings in accordance with this opinion.

Mr JUSTICE BLACK took no part in the consideration or decision of this case.

*As the Court pointed out in *Tenney*, *supra* (per Frankfurter, J.), in *Kilbourn* v. *Thompson*, *supra*, this Court "allowed a judgment against the Sergeant-at-Arms, but found that one could not be entered against the defendant members of the House." 341 U.S., at 378.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDENT pro tempore laid before the Senate the following letters, which were referred as indicated:

PROPOSED LEGISLATION ENTITLED "CRIMINAL JUSTICE INFORMATION SYSTEMS SECURITY AND PRIVACY ACT OF 1971"

A letter from the Attorney General, transmitting a draft of proposed legislation to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems (with accompanying papers); to the Committee on the Judiciary.

PROPOSED LEGISLATION ENTITLED "AIRCRAFT PIRACY AMENDMENTS OF 1971"

A letter from the Attorney General, transmitting a draft of proposed legislation to facilitate prosecutions for certain crimes and offenses committed aboard aircraft, and for other purposes (with an accompanying paper); to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2543. A bill to direct the Secretary of the Interior to convey to the city of Henderson, Nev., at fair market value, certain public lands in the State of Nevada, and to reserve certain public lands for acquisition by the Clark County School District, Nevada. Referred to the Committee on Interior and Insular Affairs.

S. 2544. A bill to declare that all right, title and interest of the United States in 2,640 acres, more or less, are hereby held by the United States in trust for the Paiute-Shoshone Tribe of the Fallon Indian Reservation, Nev. Referred to the Committee on Interior and Insular Affairs.

S. 2545. A bill to authorize the Attorney General to exchange criminal record information with certain State and local agencies. Referred to the Committee on the Judiciary.

By Mr. HRUSKA:

S. 2546. A bill to facilitate and regulate the exchange of criminal justice information and to ensure the security and privacy of criminal justice information systems. Referred to the Committee on the Judiciary.

By Mr. McGEE:

S. 2547. A bill for the protection of the bald and golden eagles. Referred to the Committee on Commerce.

By Mr. INOUYE (by request):

S. 2548. A bill to amend the Federal Aviation Act of 1958 to authorize the Civil Aeronautics Board to permit an air carrier to hold both scheduled and supplemental certification; and

S. 2549. A bill to amend the Federal Aviation Act of 1958 to give the Civil Aeronautics Board the flexibility to approve air carrier-surface carrier control relationships when such relationships are found to be in the public interest. Referred to the Committee on Commerce.

By Mr. MONDALE:

S. 2550. A bill for the relief of Manuel Ramus Ochoa and his wife, Gertrudes Ochoa. Referred to the Committee on the Judiciary.

By Mr. ROTH (for himself, Mr. TOWER, and Mr. BROOKE):

S. 2551. A bill to provide for a national program for an improved national securities transfer system, including a commercial securities depository corporation, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. BAYH:

S. 2552. A bill to prohibit discrimination on the grounds of sex by institutions of higher education, to authorize intervention by the Attorney General in suits alleging sex discrimination, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. GRIFFIN:

S. 2553. A bill to provide for the restriction of the distribution of phosphate detergents in interstate commerce and the establishment of standards protecting man and the environment for all detergents. Referred to the Committee on Commerce.

By Mr. TALMADGE:

S.J. Res. 157. Joint resolution to assure that every needy school child will receive a free or reduced price lunch as required by section 9 of the National School Lunch Act. Referred to the Committee on Agriculture and Forestry.

By Mr. WEICKER (for himself, Mr. AIKEN, Mr. BAKER, Mr. BAYH, Mr. BEALL, Mr. BENNETT, Mr. CANNON, Mr. COOPER, Mr. DOLE, Mr. DOMINICK, Mr. HUMPHREY, Mr. JACKSON, Mr. JAVITS, Mr. JORDAN of Idaho, Mr. MANSFIELD, Mr. MATHIAS, Mr. McGEE, Mr. MOSS, Mr. MUSKIE, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. ROTH, Mr. SCHWEIKER, Mr. SCOTT, Mr. STEVENS, Mr. TAFT, and Mr. TUNNEY):

S.J. Res. 158. Joint resolution to declare May 6, 1972 "Clean Up America Day" and to urge the participation of all Americans. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2543. A bill to direct the Secretary of the Interior to convey to the city of Henderson, Nev., at fair market value, certain public lands in the State of Nevada, and to reserve certain public lands for acquisition by the Clark County School District, Nev. Referred to the Committee on Interior and Insular Affairs.

Mr. BIBLE. Mr. President, on behalf of my colleague Senator CANNON and myself, I introduce for proper referral a bill to direct the Secretary of the Interior to sell to the city of Henderson, Nev., 5,885

acres of public domain land immediately adjacent to this landlocked Nevada community. The proposal provides that the city pay the fair market value as determined by the Secretary.

It is a well known fact that the Federal Government owns 87 percent of the State of Nevada and that most of its cities and towns are completely surrounded by these holdings. Prior to last year, it was possible for a community who needed areas for expansion for homes or industry to acquire land under the Public Land Sale Act of 1964. Since that act has expired, the only way available to local entities to expand is through special legislation such as the bill I am now introducing.

The land in question is southern Nevada desert. It has no value for agricultural purposes. No valuable minerals have been found in its vicinity. In my opinion, its highest and best use will be for residential and industrial development under an Interior Department approved plan.

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2544. A bill to declare that all right, title, and interest of the United States in 2,640 acres, more or less, are hereby held by the United States in trust for the Paiute-Shoshone Tribe of the Fallon Indian Reservation, Nev. Referred to the Committee on Interior and Insular Affairs.

Mr. BIBLE. Mr. President, on behalf of my colleague, Senator CANNON, and myself I introduce for proper reference a bill to relinquish the right, title, and interest of the United States to some 2,640 acres to be held by the United States in trust for the Paiute-Shoshone Tribe of the Fallon Indian Reservation in our State of Nevada.

Morally, the land and its agricultural potential belong to the Paiute-Shoshone Tribe. In the early 1900's when the Congress authorized the Newlands Reclamation project, a land exchange program was entered into between the Indians with landholdings in the project area and the United States of America. The program resulted in the Fallon Indian Reservation where the Indian families were located on 10-acre tracts with full water rights from the Newlands project. The acreage limits on the family allotments prohibit these people from making a proper living from the land. This legislation, we hope, will provide the base for a viable Indian community on an area inhabited by the tribal members long before the coming of the white man.

Mr. President, as part of my statement I ask unanimous consent that a copy of Resolution No. 7–67 of the Fallon Paiute-Shoshone Tribes of the Fallon Indian Reservation and Colony be printed at this point in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION No. 7–67 OF THE FALLON PAIUTE-SHOSHONE TRIBES OF THE FALLON INDIAN RESERVATION AND COLONY

Whereas, Article VI, Section 1 (a) of the Constitution and Bylaws of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony provides the Fallon Business Council with certain powers to negotiate with the Federal Government on behalf of the tribe, and

Whereas, dating back to the late 1890's a band of Indians settled in the Carson Sink area, and

Whereas, in the early 1900's with the creation of the Newlands Reclamation Project, a land exchange program was entered into between the Indians with land holdings in the project area and the United States of America. The program gave rise to the Fallon Reservation where the Indian families were to be located on 10-acre tracts with full water rights from the Newlands Project, and

Whereas, the Paiute-Shoshone Tribe of the Fallon Reservation and Colony are presently holding a water right on 4,877.3 acres, paid in full, and

Whereas, through experience and affirmed by field surveys, additional lands are required to make beneficial use of the above water rights, and

Whereas, it is the Business Council's understanding that a general review of withdrawn land status near the reservation is being made by the Department of Interior at this time, and

Whereas, members of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony have an urgent need and have demonstrated that it will make use of the water and additional lands to better their standard of living, now therefore,

Be It Resolved that the following described lands:

S½ of section 33, T. 20 R. 30 E., MDBM,
S½ of section 34, T. 20 N., R. 30 E., MDBM,
W½ of SE¼ and SW¼ of sec. 35, T. 20 N., R. 30 E., MDBM,
NW¼ of section 2, T. 19 N., R. 30 E., MDBM,
N½ and SW¼ of sec. 3, T. 19 N., A. 30 E., MDBM,
All of section 4, T. 19 N., R. 30 E., MDBM and
N½ and SW¼ of sec. 8, T. 10 N., R. 30 E., MDBM,

totaling some 2,640 acres be added to the Fallon Reservation and Colony to meet the above stated needs

CERTIFICATION

I, the undersigned, do hereby certify that the Business Council is composed of 5 members, of whom 4, constituting a quorum were present at a meeting called and held this 13 day of Dec., 1966, and that the foregoing resolution was adopted at such meeting by a vote of 4 for and none against, pursuant to Article VI, Section 1(a) of the Constitution and Bylaws of the Paiute-Shoshone Tribes of the Fallon Reservation and Colony.

S/ VIVIAN HICKS,
Secretary-Treasurer of the Fallon Business Council.

By Mr. BIBLE (for himself and Mr. CANNON):

S. 2545. A bill to authorize the Attorney General to exchange criminal record information with certain State and local agencies. Referred to the Committee on the Judiciary.

Mr. BIBLE. Mr. President, on behalf of myself and my colleague, Senator CANNON, I introduce for appropriate reference a bill to authorize the Attorney General to exchange criminal record information with certain State and local agencies.

Prompt attention to the problem addressed by this legislation is imperative.

On July 22, 1971, the Federal Bureau of Investigation—in a circular letter to State and local government agencies—announced that pursuant to an opinion and order of the U.S. District Court for the District of Columbia in the case of Menard against Mitchell (Civil Action 39–68), the FBI is now prohibited from disseminating criminal record information in response to fingerprints submitted by State and local law enforcement and other State and local government agencies where the request is made for other than direct law enforcement purposes.

This prohibition has already been in effect since July 22. The processing of all such fingerprints has ceased, and all requests for records in such cases are being returned without action to the State or local agencies.

This means, Mr. President, that notwithstanding specific and well-considered provisions of State and local laws throughout the Nation—provisions requiring a full inquiry into the background of persons seeking licensing or employment in sensitive businesses or occupations affected with a public interest—State and local agencies have been denied access to information available only through the FBI.

It means that where an FBI record check is required under State or local law or regulation our State and local agencies have been placed in the position of not being able to fulfill their obligations under their own laws.

My own State of Nevada has established a comprehensive system of laws and regulations to assure that the State's legalized gaming industry is closely controlled and operated fairly and honestly in the public interest. Our laws require an exhaustive investigation of all who seek gaming licenses and employment in the industry. They provide the FBI, the U.S. Treasury, and the Internal Revenue Service access to confidential records maintained by State agencies. They provide a regulatory system which is vigorously enforced by dedicated public servants.

The operation of Nevada's gaming industry is closely and effectively monitored but as a result of this recent court decision the State is now denied access to vital background information on those who would enter this sensitive industry.

In other areas, Nevada statutes or regulations required criminal record checks on applicants for licensure as lawyers, doctors of medicine, real estate brokers, private investigators, for employment in the business of dispensing alcoholic beverages, and in connection with other professions, businesses, and occupations.

And Nevada is certainly not unique. I daresay most, if not all, of the States and localities throughout the Nation have similar statutory or regulatory requirements in connection with employment in sensitive public service occupations.

Mr. President, this sudden termination of an investigative service that has been available to State and local regulatory agencies for many, many years is completely unacceptable. The FBI is the only agency in the Nation in a position to provide centralized criminal records services. Its authority to render this service in nonlaw enforcement cases must be restored—and promptly.

It seems to me, Mr. President, that the

discontinuance of these essential FBI identification services is inconsistent with the Crime Control Act of 1970, which had the overwhelming support of the Congress.

The Senate will recall that the purpose of title IX of that legislation is to curb and penalize the infiltration of legitimate business by organized criminals and racketeers.

Regulated industries are among those exposed to such infiltration. Official agencies charged with the duty to monitor and police the operations of sensitive regulated industries now find themselves denied access to essential criminal record information.

It would be inconsistent with our efforts to combat organized crime to permit this information barrier to stand.

Mr. President, I ask unanimous consent that the opinion and decision of the U.S. District Court for the District of Columbia in Menard against Mitchell, Civil Action No. 39–68 and the letter of July 22, 1971 from the Federal Bureau of Investigation to "All Fingerprint Contributors" be printed in the RECORD following my remarks.

I am not going to undertake at this time any detailed analysis of the court's opinion. It will be in the RECORD for Members to read, and will be available for analysis by the appropriate committee.

Suffice it to say that in Menard the court examined the existing statutory and regulatory framework under which the FBI has provided fingerprint identification services to nonlaw enforcement agencies of State and local governments and found it wanting.

The court noted that widespread dissemination of criminal records information may place substantial obstacles in the way of a person's opportunity for employment or advancement and can raise serious questions involving several constitutional guarantees—such as the presumption of innocence, due process, and the right to privacy.

Specifically, the court found that the existing law is designed only to facilitate coordinated law enforcement activities between the Federal and local governments to assist arresting agencies, court and correctional institutions in the apprehension, conviction, and proper disposition of criminal offenders.

The court concluded that nothing in the present statute or its legislative history indicates that the Congress intended that FBI criminal record information be made available for nonlaw enforcement purposes, and held that the FBI is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes.

At the same time, the court recognized that this is a subject involving important questions of public policy requiring action by the Congress.

The bill I am introducing today clearly and simply authorizes the Attorney General to provide criminal records identification services for the official use of authorized nonlaw enforcement officials and agencies of State and local governments where State or local laws or regulations authorize or require such officials and agencies to acquire criminal record information in the performance of their official duties.

I recognize that court decisions in this area raise important questions bearing on individual rights, and such questions require the Congress' careful attention. My purpose in introducing this limited bill at this time is to focus the Senate's attention on the problems raised by the Menard case and provide a beginning point and a vehicle for early hearings and prompt action. I invite constructive comments and improvements.

It is imperative that the Congress act speedily to remedy this situation and clearly authorize the FBI to provide these vitally important identification services to authorized nonlaw enforcement agencies of our State and local governments.

I understand the administration is also deeply concerned over this development and is expected to recommend legislation to remedy the problem.

I urge them to do so soon. Action is needed. As pointed out in Menard, the FBI needs legislative guidance. A national policy must be developed on this subject which will make the FBI's services available and at the same time safeguard constitutionally guaranteed rights to privacy.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[In the U.S. District Court for the District of Columbia, Civil Action No. 39–68]

DALE B. MENARD, PLAINTIFF, *v.* JOHN MITCHELL ET AL., DEFENDANTS

MEMORANDUM OPINION

Plaintiff has brought this action to expunge his arrest record contained in the Fingerprint Identification files of the Federal Bureau of Investigation. That record reads as follows:

Date arrested or received: 8/10/65
Charge or offense: 459 PC Burglary
Disposition or sentence: 8/12/65
Unable to connect with any felony or misdemeanor—in accordance with 849b(1)—not deemed an arrest but detention only.
Occupation: student

Originally the matter was presented to another Judge of this Court on cross-motions for summary judgment and defendants prevailed. The Court of Appeals reversed and remanded for the taking of testimony after expressing interest and concern with issues suggested by the pleadings which the Court apparently felt had not been fully developed in the record. *Menard* v. *Mitchell,* U.S. App. D.C., 430 F. 2d 486 (1970). Accordingly, further evidence was taken at a full hearing and the issues have been briefed and argued.

Menard, age 19 at time of arrest and subsequently an officer in the Marine Corps, contends that his arrest in Los Angeles was without probable cause and that future dissemination of the above arrest record, now in the files of the FBI, may impede his employment opportunities and subject him to an increased risk of being suspected and arrested for crimes on other occasions. He seeks expungement of the record or, in the alternative, strict limitations on its dissemination by the FBI.

Before considering the merits of the expungement issued raised, it is appropriate to set forth complete findings on two subjects indicated by the Court of Appeals as matters for particular inquiry on remand: the procedures and practices of the FBI with respect to maintaining arrest records and the circumstances of Menard's arrest.

I. THE PROCEDURES OF THE FBI IDENTIFICATION DIVISION

Fingerprint and arrest records such as Menard's are under the jurisdiction of the Federal Bureau of Investigation's Identification Division. This Division, which has been in existence since 1924, functions under the Attorney General, and proceeds by authority of 28 U.S.C. 534, which reads as follows:

§ 534. Acquisition, preservation, and exchange of identification records; appointment of officials

(a) The Attorney General shall—

(1) acquire, collect, classify, and preserve identification, criminal identification, crime and other records; and

(2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records authorized by subsection (a)(2) of this section is subject to cancellation of dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section. Added. Pub. L. 89–554, § 4(c), Sept. 6, 1966, 80 Stat. 616.

The Attorney General has made a series of rulings interpreting the statute. These are largely codified in 28 C.F.R. § 0.85(b) which provides that the Director of the FBI shall:

"Conduct the acquisition, collection, exchange, classification, and preservation of identification records, including personal fingerprints voluntarily submitted, on a mutually beneficial basis, from law enforcement and other governmental agencies, insurance companies, railroad police, national banks, member banks of the Federal Reserve System, FDIC-Reserve-Insured Banks, and banking institutions insured by the Federal Savings and Loan Insurance Corporation; provide expert testimony in Federal or local courts as to fingerprint examinations; and provide identification assistance in disasters and in missing persons type cases."

The FBI Identification Division has fingerprints of some two hundred million persons on file. These records are maintained in separate criminal and applicant files. Fingerprints are submitted to the Bureau by federal, state, and local agencies on a reciprocal basis. Law enforcing agencies, primarily local police and sheriff's offices, submit prints of arrested persons in order to receive information on the person's prior criminal involvement. The Bureau reports its findings and maintains the fingerprint card so submitted, along with the accompanying arrest data, in its criminal file. Information on the subsequent disposition of each arrest is posted if received from the submitting agency. The information so recorded is cryptic and formal, without explanation or elaboration. Juvenile arrests and convictions, when submitted by local agencies, are treated the same as similar adult data. The criminal file currently contains information on some sixty million arrests of approximately nineteen million people.

Fingerprint cards are also received from agencies of the state and federal governments and others who seek information on an individual's record of criminal involvement in connection with permits, licenses, and employment clearance.

After check against the criminal file, these cards are maintained in the applicant file for future reference. The Division also receives hundreds of "name check" requests from contributing and non-contributing sources, including an occasional Congressman, asking for the criminal record of an individual by name without submitting any fingerprints for comparison. Many of these cannot be

processed because of inadequate identification of the person named, particularly where common names are involved. Where possible, however, and where the inquiring agency gives what the FBI considers a legitimate reason for the request, these inquiries are processed.

The volume of work of the Division is enormous, requiring about 3,300 employees. The Division receives an average of 29,000 fingerprints a day for processing, of which about 13,000 are received from law enforcing agencies in connection with arrests.

This Division, broadly speaking, considers any state, city or county official to be authorized to receive information if the agency has something to do with law enforcement or if it is authorized by statute, ordinance, or rule to fingerprint applicants for employment or for a permit or license. The laws and ordinances of various local areas vary widely. Some areas do not require fingerprinting for practically any purpose while others have highly detailed fingerprinting requirements for varied and often quite minor occupations. Examples are listed in Appendix A. The record contains a long list of state and local governments and a large number of different licensing authorities who by law or regulation are required to take fingerprints as part of their licensing duties. The Division maintains a current list of contributing or participating state and federal agencies which now numbers between 7,000 and 8,000. Of these, approximately 3,750 are local police departments and sheriff offices. Criminal record data is not sent directly to private employers, except in a few instances such as 390 banks insured by the F.D.I.C. and certain hospitals.[1]

As far as the Federal agencies are concerned, Executive Order 10450 of April 1953, 3 C.F.R. 936 (1949–53 Comp.), 5 U.S.C. § 7311, requires a check of the FBI fingerprint files on practically all applications for employment in the Federal Government whether or not engaged in law enforcement. The Civil Service Commission and the Military account for the highest volume of fingerprints submitted to the Bureau.

Given the very general nature of its purported authority the Bureau has proceeded cautiously. It investigates the authority of local agencies to require fingerprints and insists that detailed forms be filled out by contributors showing the purpose for which fingerprints are to be submitted. The Attorney General advises in doubtful situations. The Division has carried out its work in a responsible, meticulous manner. Nonetheless, the end result is most unsatisfactory. While the Division has vigorously sought to develop complete records and particularly to learn of dispositions resulting from each arrest, this effort has not been successful due to the failure of arresting agencies to send in follow-up data on forms provided. Some police departments do much better than others in this regard, but the Division has no sanctions and must be satisfied with what it can get by persuasion since the whole system functions on a voluntary basis. Even more troublesome is the fact that the Division has little opportunity to supervise what is actually done with the arrest records it disseminates. It requires that a proper purpose be stated by the agency requesting information but what is in fact done with the information as a practical matter cannot be constantly checked.

It is apparent that local agencies may often pass on arrest information to private employers. The Division makes no regular inspection to prevent this, for it has neither funds nor sanctions, and accordingly responds only to complaints. In a few instances police departments have been restricted, and in other instances when complaints were received personnel or administrative changes were demanded by the FBI and put into effect.

The FBI does not supply an individual with his arrest record except under rare special circumstances. The reasons are apparently two: the difficulty of obtaining definite identification of the person requesting the record, and fiscal considerations. There is no sure procedure for finding an arrest record by name only. A clear set of fingerprints is required for matching purposes. Thus as a practical matter an individual must submit his prints to get a check made of his record. This is cumbersome. Moreover, the Division is already so hard-pressed that it cannot now meet the demands on it from all local agencies. A regular system of servicing individual requests would require an estimated $110,000 per annum, plus appropriations for at least six additional employees.

Any agency that forwards fingerprint arrest data to the Division may request the Bureau to remove the data from the file and return it. This the Bureau does automatically, retaining no copies and without inquiring as to the reasons underlying the request. Thus control of what arrest or criminal data remain in the files rests in every case (except where an arrest on Federal charges is involved) with the local arresting authority. In 1970 over 8,000 arrest records were returned by the FBI to local authorities. Some thirteen states, including California, have laws or procedures for authorizing this form of expungement in varying circumstances.

In addition some states have laws limiting the type of arrest data that can be forwarded routinely to the Bureau.

Against this background, which was more fully developed in the record in an effort to supply the type of data requested in the decision of the Court of Appeals, it is possible to turn to the issues presented by this particular lawsuit.

II. THE CIRCUMSTANCES OF THE ARREST

Menard was arrested on suspicion of burglary by two officers of the Los Angeles Police Department. The arrest occurred around 4:00 a.m. on August 10, 1965. The police had earlier that morning received a complaint of a prowler at a sanatorium located in a high crime area. The prowler was reported looking in windows and at the back parking lot of the institution. Checking on this complaint, the police obtained a description of the man and proceeded to patrol the area. A short distance away they saw an unkempt, unshaven man fitting the description, dressed in dark clothing lying on a park bench. That man was Menard. Near him on the ground was a wallet belonging to someone else containing $10. The officers had reason to believe the wallet might have been discarded by Menard as he observed the officers approaching him through the park. The arrest was made without knowledge of any specific burglary[2] but on the basis of the prowler complaint, the suspicious presence of the wallet, and the general circumstances outlined above. Menard's arrest was with probable cause. *Ker* v. *California*, 374 U.S. 23, 34–35 (1963); *Jackson* v. *United States*, 112 U.S. App. D.C. 260, 302 F. 2d 194, 196 (1962); *People* v. *Fischer*, 49 Cal. 2d 442, 314 P. 2d 967, 970 (1957).

Menard was booked at the precinct after the Watch Commander reviewed the facts and circumstances reported by the officers. He was fingerprinted and his prints with a notation of his arrest were sent to the Bureau in accordance with regular procedures. After further investigation, Menard was released in accordance with the provisions of the California Penal Code, the police being "unable to connect with any felony or misdemeanor at this time." Plaintiff and his family then sought by lengthy correspondence with the Los Angeles Police Department to have the record expunged by the Police Department but were finally advised on May 31, 1966, that removal of the record would be possible "only upon order of a court of competent jurisdiction." This was confirmed by correspondence with the Bureau which took the position that the Bureau had no authority to determine what fingerprints should be in the FBI files.

III. EXPUNGEMENT

The Government argues persuasively that a district court is without authority to make a determination of probable cause where a state arrest is concerned, and that in any event the Court should in such cases exercise its discretion and not intervene, leaving Menard to pursue his expungement remedies in the California state courts. There is substantial authority and much common sense supporting this position.

The FBI simply records in its files information supplied by other agencies, and is in no position to make an independent investigation of the circumstances of an individual's arrest by state authorities or later developments in his case. Nor is a Federal District Court in a position to litigate the merits of arrests made by state authorities far away from its jurisdiction, as the problems of proof in this case demonstrate.

The Bureau uniformly honors requests by contributing agencies that a record be removed from the FBI files and returned to the agency. Whatever the issue as to the legality of an arrest record, an action for its expungement cannot be maintained unless administrative remedies are first exhausted; and where these efforts are unsuccessful, as were Menard's, resort should be had in the first instance to the state courts. This procedure is strongly suggested if not compelled by recent cases which hold that federal courts should refrain from interfering with a state's administration of its own criminal laws, and should abstain from deciding issues of local concern until they are first presented to the state courts. *See, e.g., Younger* v. *Harris*, 401 U. S. 37, 43–44 (1971); *Fay* v. *Noia*, 372 U.S. 391, 417–20 (1963); *Buechold* v. *Ortiz*, 401 F. 2d 371, 373 (9th Cir. 1968); *Ganger* v. *Peyton*, 379 F. 2d 709, 710 (4th Cir. 1967). The fact that the Court has made the factual determination of probable cause in this case arises solely from the specific directions given on the remand and should be no precedent for the future.

The Court of Appeals apparently felt that a finding of probable cause was relevant to a determination of the question whether Menard's arrest record is a "criminal record" of the type which the Bureau is authorized to maintain under 28 U.S.C. § 534. Analysis demonstrates, however, that the question of probable cause has little to do with the merits of the underlying controversy. An arrest whether made with or without probable cause is to be sure a fact, but one that proves nothing so far as the actual conduct of the person arrested is concerned. An arrest without probable cause may still lead to conviction and one with probable cause may still result in acquittal. Under our system of criminal justice, only a conviction carries legal significance as to a person's involvement in criminal behavior. As the Supreme Court stated in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 241 (1957):

"The mere fact that a man has been arrested has very little, if any, probative value in showing that he has engaged in any mis-

[1] Insurance companies are aided in necessary identification work but are not furnished criminal record data by the FBI.

[2] Burglary is defined under the California Criminal Code § 13–459 as follows:

Every person who enters any house, room apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building . . . with intent to commit grand or petit larceny or any felony is guilty of burglary.

conduct. An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever probative force the arrest may have had is normally dissipated. [Footnote omitted.]"

Other cases have held that arrests without convictions may not legally be used as the basis for adverse action against an individual. In *Gregory* v. *Litton Systems, Inc.*, 316 F. Supp. 401 (C.D. Calif. 1970), the practice of an employer in denying employment to persons with arrest records was found to violate Title VII of the Civil Rights Act of 1964. The court made factual findings that such a practice disqualified a higher proportion of blacks than whites, and that "information concerning a prospective employee's record of arrests without convictions is irrelevant to his suitability or qualification for employment." 316 F. Supp. 401, 403. *See also United States* v. *Kalish*, 271 F. Supp. 968, 970 (D. Puerto Rico 1967).

Relying on these general principles, Menard argues that in the absence of a conviction, the maintenance and use of his arrest record for any purpose whatsoever violates several constitutional guarantees—the presumption of innocence, due process, the right to privacy, and the freedom from unreasonable search under the Fourth Amendment. There are few precedents which deal directly with these issues. Those that do exist usually involve special circumstances such as dragnet arrests or arrests under patently unconstitutional statutes. *See, e.g., Wheeler* v. *Goodman*, 306 F. Supp. 58 (W.D. N.C. 1969); *Hughes* v. *Rizzo*, 282 F. Supp. 881 (E. D. Pa. 1968). Others have granted relief on motion ancillary to a pending criminal proceeding, calling upon general equity principles or local rules rather than constitutional considerations. *See, e.g. Morrow* v. *District of Columbia*, 135 U.S. App. D.C. 160, 417 F.2d 728 (1969); *United States* v. *Kalish*, 271 F.Supp. 968 (D. Puerto Rico 1967); *Irani* v. *District of Columbia*, A.2d (D.C. App. Jan. 27, 1971).

Each of Menard's constitutional arguments makes certain assumptions about the uses to which his arrest record will be put. As the Court of Appeals noted, it is a fact subject to ready judicial notice that dissemination of an arrest record may place substantial obstacles in the way of a person's opportunity for employment or advancement, and may also affect aspects of law enforcement and judicial action. No court has yet examined the legality of FBI practices with respect to the dissemination of arrest records. It is appropriate, therefore, to deal fully with those issues before reaching any expungement claims. The Court is required to determine under what circumstances, if any, arrest records not reflecting a later conviction may be disseminated by the Bureau either within or outside the Federal Government.

IV. DISSEMINATION OF ARREST RECORDS

Throughout the years Courts have sought to preserve a citizen's right to privacy against changes in our culture and developing modes of governmental regulation. As early as 1886 the Supreme Court stated in *Boyd* v. *United States*, 116 U.S. 616, 630 (1886), that privacy is inherent in our constitutional form of government. Referring to earlier British precedent the Court noted that privacy was a sacred right, stating:

"The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court, with its adventitious circumstances; they apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence,—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. . . ."

A moment's thought demonstrates the wisdom of this precept, as of course many subsequent decisions and commentators have noted.[3] While conduct against the state may properly subject an individual to limitations upon his future freedom within tolerant limits, accusations not proven, charges made without adequate supporting evidence when tested by the judicial process, ancient or juvenile transgressions long since expiated by responsible conduct, should not be indiscriminately broadcast under governmental auspices. The increasing complexity of our society and technological advances which facilitate massive accumulation and ready regurgitation of far-flung data have presented more problems in this area, certainly problems not contemplated by the framers of the Constitution.[4] These developments emphasize a pressing need to preserve and to redefine aspects of the right of privacy to insure the basic freedoms guaranteed by this democracy.

A heavy burden is placed on all branches of Government to maintain a proper equilibrium between the acquisition of information and the necessity to safeguard privacy. Systematic recordation and dissemination of information about individual citizens is a form of surveillance and control which may easily inhibit freedom to speak, to work, and to move about in this land. If information available to Government is misused to publicize past incidents in the lives of its citizens the pressures for conformity will be irresistible. Initiative and individuality can be suffocated and a resulting dullness of mind and conduct will become the norm. We are far from having reached this condition today, but surely history teaches that inroads are most likely to occur during unsettled times like these where fear or the passions of the moment can lead to excesses. The present controversy, limited as it is, must be viewed in this broadest context. In short, the overwhelming power of the Federal Government to expose must be held in proper check.

Menard, formerly a responsible officer in the Marine Corps, will in all likelihood not be hurt by his arrest which proved unfounded, but as a citizen he has the right to question the largely uninhibited distribution of information about this episode in his past. Where the Government engages in conduct, such as the wide dissemination of arrest records, that clearly invades individual privacy by revealing episodes in a person's life of doubtful and certainly not determined import, its action cannot be permitted unless a compelling public necessity has been clearly shown. Neither the courts nor the Executive, absent very special considerations, should determine the question of public necessity *ab initio*. The matter is for the Congress to resolve in the first instance and only congressional action taken on the basis of explicit legislative findings demonstrating public necessity will suffice.

This brings under pointed analysis the import of the legislation under which the Attorney General has delegated fingerprint identification functions to the Bureau. The statute previously quoted, 28 U.S.C. § 534, must be narrowly interpreted to avoid the serious constitutional issues raised by Menard and noted by the Court of Appeals. Viewed in this light, it is abundantly clear that Congress never intended to or in fact did authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks.

The statute read as a whole is obviously designed only to facilitate coordinated law enforcement activities between the federal and local governments, that is, to assist arresting agencies, courts and correctional institutions in the apprehension, conviction and proper disposition of criminal offenders. Neither the statute nor the debates[5] so much as mention employment, and it is beyond reason to assume that Congress intended that this confidential quasi-investigative data should be handed to anyone who under authority of local ordinance or statute was authorized to take a fingerprint from an applicant for a position in public or private employment. At the time the statute was passed and since, there is no rational or uniform system among the states and local governments for obtaining fingerprints from applicants, and the compelling necessity of federal action to supply criminal information cannot be established by the whim or intolerance of any local board of selectmen.

The principal faults in the present system may be briefly indicated:

(1) State and local agencies receive criminal record data for employment purposes whenever authorized by local enactment. These enactments differ state-by-state and even locality-by-locality within a particular state. See Appendix A. Thus there is no pattern that finds justification either in terms of over-all law enforcement objectives or by category of employment.

(2) The Bureau cannot prevent improper dissemination and use of the material it supplies to hundreds of local agencies. There are no criminal or civil sanctions. Control of the data will be made more difficult and opportunities for improper use will increase with the development of centralized state information centers to be linked by computer to the Bureau.

(3) The arrest record material is incomplete and hence often inaccurate, yet no procedure exists to enable individuals to obtain, to correct or to supplant the criminal record information used against them, nor indeed is there any assurance that the individual even knows his employment application is affected by an FBI fingerprint check.

(4) The demands made of the Division for employment data have so increased that the Bureau now lacks adequate facilities to service new applicants who fall within its own vague standards of eligibility.

In short, with the increasing availability of fingerprints, technological developments, and the enormous increase in population, the system is out of effective control. The Bureau needs legislative guidance and there must be a national policy developed in this area which will have built into it adequate sanctions and administrative safeguards.[6] It is not the

[3] *See especially* A. Miller, The Assault on Privacy (1971), and his voluminous notes and citations.

[4] See President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Science and Technology, at 74–77 (1967). Dealing specifically with arrest records, the Commission noted three serious problems in their use:

"The record may contain incomplete or incorrect information.

The information may fall into the wrong hands and be used to intimidate or embarrass.

The information may be retained long after it has lost its usefulness and serves only to harass ex-offenders, or its mere existence may diminish an offender's belief in the possibility of redemption."

[5] The legislative history is exceedingly spare. The discussion which did take place in Congress only emphasizes the limitation of the Identification Division to criminal law enforcement purposes. 72 Cong. Rec. 1989 71st Cong., 2d Sess., Jan. 20, 1930).

[6] An extended discussion of the problem and some reasonable recommendations for legislation were made in the Task Force Report on Science and Technology, President's Commission on Law Enforcement and Administration of Justice, pp. 74–77 (1967).

function of the courts to make these judgments, but the courts must call a halt until the legislature acts. Thus the Court finds that the Bureau is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes.

When the statute is thus construed there is no difficulty in upholding it for the limited purpose that was intended. There is a compelling necessity to furnish arrest data to other law enforcing agencies for strictly law enforcement purposes. Arrest records are available in uncovering criminal conduct, they play a significant role in the prosecutor's exercise of discretion, they greatly aid in setting bond, determining sentences and facilitating the work of penal and other institutions of correction. When arrest records are used for such purposes, they are subject to due process limitations within the criminal process, and misuse may be checked by judicial action. The same safeguards are not present when an arrest record is used for employment purposes, often without the knowledge of the person involved. Menard's arrest record will not be expunged where its dissemination outside the Federal Government is limited to law enforcement purposes.

This leaves open for consideration the Federal Government's use of these records for purposes of governmental employment only. Executive Order 10450, *supra*, limited as it has been by previous Court decisions, must be recognized as a proper exercise of the President's responsibilities in the name of national security. There are many Civil Service and other built-in safeguards which protect misuse of this information. It cannot be passed on to private employers, including Government contractors. The Government's discreet use of this information already in its possession for its own limited employment purposes in aid of national security cannot be said to infringe any constitutional right asserted by Menard. While the point is of no consequence in his particular case, the Court ventures to suggest that the Executive Order should be re-examined in the light of present conditions and can in several respects be made more consonant with fair play, particularly if all applicants for federal service receive a personal copy of their record in time to correct or explain any data therein contained.

Menard's prayer for expungement is denied. His arrest record may not be revealed to prospective employers except in the case of any agency of the Federal Government if he seeks employment with such agency. His arrest record may be disseminated to law enforcement agencies for law enforcement purposes. An appropriate order to this effect is attached.

The foregoing shall constitute the Court's findings of fact and conclusions of law.

GERHARD A. GESELL,
U.S. District Judge.

June 15, 1971.

APPENDIX A—SAMPLE OF PERSONS REQUIRED TO BE FINGERPRINTED BY STATE OR LOCAL STATUTE, ORDINANCE OR RULE

Glendale, Arizona: Taxicab drivers and operators; transient, itinerant or traveling merchants, peddlers, private detectives, solicitors or canvassers, massage parlor operators, and employees.

Denver, Colorado: Any applicant for a driver's license.

District of Columbia: Auctioneers, fortune tellers, hackers, junk dealers, mediums, parking lot attendants, pawnbrokers, second hand dealers, solicitors, vendors; operators of billiard parlors, bowling alleys, detective agencies, massage establishments, pool rooms, shooting galleries; ABC licensees.

Town of Manalapan, Florida: Every person employed in any club, any place handling liquor, beer or wine in any form, motels, hotels, apartment houses, health spas, hospitals, and all newspaper carriers over the age of sixteen years, service station employees, special police officers, nurses, boat captains and crew members, town employees, estate maintenance employees, including lawn men, gardeners, and caretakers, and all domestic servants in the town.

State of Idaho: All real estate salesmen and brokers.

State of Maryland: Pari-mutuel employees and stable employees, including but not limited to foremen, exercise boys and grooms.

Springfield, Missouri: Female entertainers performing in establishment serving intoxicating beverages.

State of Nevada: Every applicant for a license to practice medicine.

State of North Carolina: Applicants for admission to the Bar.

Provincetown, Massachusetts: All non-residents seeking employment.

[In the U.S. District Court for the District of Columbia, Civil Action No. 39–68]

DALE B. MENARD, PLAINTIFF, VERSUS JOHN MITCHELL ET AL., DEFENDANTS

ORDER

This cause having come on for trial and the Court having this day filed a Memorandum Opinion containing its findings of fact and conclusions of law, it is this 15th day of June, 1971,

Ordered that defendants, their agents, successors and assigns, are permanently enjoined from disclosing the fingerprint card containing the arrest record of Dale B. Menard, or any facsimile thereof, to any person other than the following:

1. Employees of the Federal Bureau of Investigation;

2. Officials of any agency of the United States Government, in the event that Dale B. Menard applies to such agency for employment; and

3. Officials of any law enforcement agency of the United States Government or of any state or local government, provided that such official certifies that the record is to be used by that agency internally and solely for law enforcement purposes. The term law enforcement agency shall include only police and other agencies authorized to make arrests for criminal violations; courts; prosecutors' offices; and penal or other correctional institutions.

Nothing in this Order shall limit the ability of the Bureau or any receiving agency from disclosing the arrest record on order of any court of competent jurisdiction.

It is further ordered that plaintiff's prayers for relief in the complaint are in all other respects denied.

GERHARD A. GESELL,
U.S. District Judge.

LETTER TO ALL FINGERPRINT CONTRIBUTORS

FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., July 22, 1971.

Re FBI Identification Services

DEAR SIR: The following items are of immediate concern to all of us in law enforcement. We solicit your cooperation in implementing those changes requested.

FBI NUMBER

Effective immediately all criminal fingerprint cards requiring an answer will be given an FBI number if one has not been assigned previously. As you know, the practice in the past has been to assign such a number upon receipt of the second set of prints. A number now will be assigned upon receipt of the first set. This change is deemed desirable in view of the Computerized Criminal History Program scheduled for implementation this November, wherein the FBI number is a necessary element for entry into the system. The new procedure also should materially aid in curtailing multiple fingerprint submissions applicable to the same arrest or incarceration. Such submissions lead to the costly and time-consuming task of locating fingerprint jackets which are out of file as a result of the original fingerprint submission. The key to alleviating this problem of multiple submissions is close cooperation and effort by all.

DISCLOSURE OF FBI IDENTIFICATION RECORDS TO SUBJECTS

There has been some misunderstanding on the part of certain fingerprint contributors concerning disclosure of the contents of FBI identification records to the subjects of those records. Some law enforcement agencies have been under the impression that they would be denied future access to FBI identification records if they were to comply with a court order directing that a subject be permitted to examine the contents of his own record. Whereas the records themselves, or copies thereof, should not be furnished and the caution to treat such records for official use only should be strictly adhered to, certainly compliance with a court order constitutes an official use. Please insure there is no misunderstanding within your own agency or on the part of other criminal justice agencies that the FBI does not object to disclosure of the contents of an FBI identification record to the subject of that record where disclosure is made pursuant to court order in any pending criminal or civil case.

NON-FEDERAL APPLICANT FINGERPRINTS

Acting on remand in Menard v. Mitchell, 430 F2d 486 (1970), United States District Judge Gerhard A. Gesell, District of Columbia, on June 15, 1971, handed down a Memorandum Opinion in this case (Civil Action No. 39–68) which prohibits the FBI from disseminating identification records in response to fingerprints submitted by state and local law enforcement and other government agencies in connection with non-law enforcement purposes. This prohibition also extends to Federally insured banks and savings and loan institutions as well as railroad police. This means that effective immediately the FBI can no longer accept for processing fingerprints taken in connection with licensing or local or state employment which were formerly submitted directly to the FBI from the regulatory agency or institution or through a local law enforcement agency. We will continue to process applicant prints where the position sought is directly with a state or local law enforcement or correctional agency, as such processing directly serves a law enforcement purpose. There are no other exceptions.

In examining the issue of historic statutory authority for the Government to engage in such practice, the court observed "it is abundantly clear that Congress never intended to or in fact did authorize dissemination of arrest records to any state or local agency for purposes of employment or licensing checks." He further noted "the Bureau (FBI) needs legislative guidance and there must be a national policy developed in this area which will have built into it adequate sanctions and administrative safeguards. It is not the function of the courts to make these judgments, but the courts must call a halt until the legislature acts. Thus the court finds that the Bureau is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes."

In its study and review of the court's action, the FBI has sought and obtained guidance and interpretation from the Department of Justice. There appears to be no choice but to cease processing all types of non-Federal applicant fingerprints. You will be promptly advised of any Congressional clarification of the Bureau's authority in this area. In the meanwhile all such fingerprint submissions will be returned to the contributing agency.

ARREST DISPOSITION DATA

The response to our letter of June 2, 1971, urging the submission of final arrest disposition data has been most gratifying. We have received numerous favorable replies pledging full cooperation, offering suggestions and asking questions. One question frequently raised is whether arrest fingerprint cards should be held by the contributor until final disposition is known, which in some instances may take months or even years. The answer, of course, is to submit arrest fingerprint cards promptly and follow with disposition information when it is available. In this way you can receive any identification record the individual may have in response to your fingerprint submission, and fugitives against whose fingerprints stops have been placed in our files will be promptly identified. Another point not universally understood is that disposition information should only be sent to the FBI when arrest fingerprints for the same offense were forwarded previously. Otherwise, we have nothing in our files to support the final disposition supplied. A third point I want to stress is that disposition submissions should be individual separate communications and not in list form. The reason for this is that the forms are filed in individual jackets relating to each subject of an FBI number.

In our continuing effort to obtain complete reporting of final dispositions, we have redesigned the final disposition report (form R–84), a sample of which is set forth in reduced size as an attachment to this communication. The most radical change is that as now designed, the form is to accompany the case file (or the arresting officer's report) so that the final disposition can be reported in each case at whatever level it occurs—police, prosecutor, or court. We recognize that the adoption of such procedure will require an educational program with criminal justice agencies. The disposition form will follow the arrestee's record on the current charge(s) until final action is taken as a result of his arrest. If the case goes to the prosecutor, his office should complete the form and submit it to the FBI Identification Division when the matter is resolved at this level. If court action is required, the prosecutor's office or clerk of the court should complete the form and forward it. Note particularly the provision for four-finger fingerprint impressions and instruction number two on the reverse side of the form. This provision was included in anticipation of a possible future requirement that records of convictions in the National repository be supported by fingerprints. Also, of course, more positive controls are thereby provided for the entire system. The actual size of the form will be the same as a fingerprint card, namely, 8 inches by 8 inches.

For the sake of uniformity and standardization, particularly in light of the tremendous volumes of forms handled by the FBI Identification Division, it is essential that the new form be utilized by all contributiors in reporting final dispositions. The new R–84 form is being printed on green stock and as soon as copies are available an initial supply will be sent to each fingerprint contributor. Thereafter, you should order the form as you need additional copies.

Very truly yours,

JOHN EDGAR HOOVER,
Director.

Mr. CANNON. Mr. President, I am pleased to join with the senior Senator from Nevada in offering legislation to remedy the adverse effects of Judge Gesell's June 15 decision regarding FBI identification services.

The court ruled that the Federal Bureau of Investigation could no longer disseminate identification records in response to requests submitted by local and State governmental agencies in connection with nonlaw-enforcement purposes. This service has been halted until the Congress acts to provide the necessary authority to disseminate arrest records outside the Federal Government for employment, licensing, and related purposes.

The legislation we offer today will authorize the Attorney General to exchange criminal record information with State and local agencies. The Nevada attorney general and the director of the Nevada Commission on Crime, Delinquency, and Corrections advise me that they have been seriously hampered in their efforts to screen personnel applying for licensing and employment. Our bill will permit States to utilize the FBI identification services in the employment of schoolteachers, the licensing of lawyers, private investigators, real estate agents, and other areas of nonlaw-enforcement employment.

Our bill is very much needed in Nevada where privilege industries play such a large role in the State. It is essential that the State be able to obtain information on potential employees and employers in the gaming and liquor industries.

It is my understanding that the Justice Department is preparing a bill somewhat similar to the one being introduced today. I would urge the Department to send their proposal up as quickly as possible so that we may have an opportunity to review their approach to the problem. I am confident that we can agree upon a bill that would extend this essential service and, at the same time, provide adequate sanctions and administrative safeguards.

By Mr. HRUSKA:

S. 2546. A bill to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems. Referred to the Committee on the Judiciary.

Mr. HRUSKA. Mr. President, I introduce today a bill which confronts Congress with the important issue of how law enforcement agencies—Federal, State, and local—can maintain and disseminate necessary information on criminal offenders and still protect the privacy rights of the individuals concerned.

This has become an increasingly more critical issue in the computer age, as the hearings held early this year by the Subcommittee on Constitutional Rights amply demonstrated. The problem was stated succinctly by the President's Commission on Law Enforcement and Administration of Justice, as follows:

> The importance of having complete and timely information about crimes and offenders available at the right place and the right time has been demonstrated throughout this chapter and, indeed, throughout this report. With timely information, a police officer could know that he should hold an arrested shoplifter for having committed armed robbery elsewhere. With a more detailed background on how certain kinds of offenders respond to correctional treatment, a judge could more intelligently sentence a second offender. With better projections of next year's workload, a State budget office would know whether and where to budget for additional parole officers.
>
> Modern information technology now permits a massive assault on these problems at a level never before conceivable. Computers have been used to solve related problems in such diverse fields as continental air defense, production scheduling, airline reservations, and corporate management. Modern computer and communications technology permits many users, each sitting in his own office, to have immediate remote access to large computer-based, central data banks. Each user can add information to a central file to be shared by the others. Access can be restricted so that only specified users can get certain information.
>
> The most delicate part of any criminal justice information system is the record of previously arrested people and accompanying information about them. Such information is valuable in making prosecution, sentencing, and correctional decisions. But whenever government records contain derogatory personal information, they create serious public policy problems:
>
> The record may contain incomplete or incorrect information.
>
> The information may fall into the wrong hands and be used to intimidate or embarrass.
>
> The information may be retained long after it has lost its usefulness and serves only to harass ex-offenders, or its mere existence may diminish an offender's belief in the possibility of redemption.
>
> Heretofore, the inherent inefficiencies of manual files containing millions of names have provided a built-in protection. Accessibility will be greatly enhanced by putting the files in a computer, so that the protection afforded by inefficiency will diminish, and special attention must be directed at protecting privacy. However, the new technology can create both more useful information and greater individual protection.

Since the issuance of the Crime Commission's report in 1967, a great deal of study has been given to the security and privacy aspects of criminal justice information systems. The Law Enforcement Assistance Administration, created by the Omnibus Crime Control and Safe Streets Act of 1968, soon originated as Project SEARCH—System for Electronic Analysis and Retrieval of Criminal Histories—a prototype, computerized system for the exchange of criminal history information among the States. In December 1970, having successfully demonstrated the prototype, Project SEARCH was turned over to the FBI for development of an operational system to be part of the National Crime Information System. One of the crucial decisions required to be made by the SEARCH project group was how to deal with the security and privacy problem. The recommendations of that group, which was composed of distinguished members of the law enforcement and data processing communities, contributed significantly to the development of the legislation I now introduce.

In the course of the consideration in the Senate of the proposed Omnibus Crime Control Act of 1970, an amendment was added to that legislation by the Committee on the Judiciary, to require the Law Enforcement Assistance Administration to submit legislative recommendations to promote the integrity and accuracy of criminal justice data collection. Popularly known as the Mathias amendment, for its author, our colleague from Maryland, the provision was subsequently amended in conference to make clear that the legislative recom-

mendations should assist in the purposes of the law enforcement assistant program.

The bill which I introduce is Attorney General Mitchell's response to the legislative mandate of the 190 act.

The significant features are:

Provide for stringent controls over the security of criminal justice data systems, including that they be used only for law enforcement purposes and under the management control of law enforcement agencies. In order to permit State and local agences which cannot now meet these requirements to participate in a system, the Attorney General is authorized to grant waivers in proper cases.

Provides for limited access to covered data systems. Only law enforcement agencies—police, courts, corrections—will have direct access. Further dissemination of information must be necessary to the enforcement of a specific law and approved by the Attorney General.

Authorizes an individual to have access to his record so that he may ensure that it is accurate and complete.

Requires operating procedures to assure that each individual's record is purged from the active files after the passage of a sufficient period of time to indicate that the individual is no longer active in the criminal justice system—that is, deceased or rehabilitated.

Provides for civil and criminal penalties for the willful dissemination or use of criminal justice information in violation of the provisions of the bill.

Authorizes the Attorney General to prescribe regulations to carry out the provisions of the bill.

Mr. President, the issues formed by this bill are deserving of the serious and prompt consideration of the Senate. I urge my colleagues to join with me in according it that consideration.

I ask unanimous consent that the Attorney General's letter transmitting the legislation, the bill, and a section-by-section analysis be printed in the RECORD. I ask that the bill be appropriately referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2546

A bill to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Information Systems Security and Privacy Act of 1971."

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements and organizations thereof, funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing or dissemination of criminal offender record information or criminal intelligence information.

(2) "criminal offender record information" means records and related data, contained in a criminal justice information system, compiled by law enforcement agencies for purposes of identifying criminal offenders and alleged offenders and maintaining as to such persons summaries of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation and release.

(3) "criminal intelligence information" means investigatory information, including reports of informants and investigators, in matters pertaining to law enforcement, contained in a criminal justice information system and indexed under an individual's name, or retrievable by reference to an individual by name or otherwise. The term does not include information from the news media or other sources accessible to the public.

(4) "criminal justice information" includes criminal offender record information and criminal intelligence information.

(5) "Law enforcement" means any activity pertaining to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control or reduce crime or to apprehend criminals, activities of corrections, probation or parole authorities.

(6) "law enforcement agency" means a public agency which performs as its principal function activities pertaining to law enforcement.

ACCESS AND USE

SEC. 3. (a) Except as provided in subsections (b) and (c) of this section, access to criminal justice information systems shall be available only to law enforcement agencies. Criminal justice information may be used only for law enforcement purposes or for such additional lawful purposes necessary to the proper enforcement or administration of other provisions of law as the Attorney General may prescribe by regulations issued under section 6.

(b) Criminal justice information may be made available to qualified persons for research related to law enforcement under regulations established by the Attorney General. Such regulations shall establish procedures to assure the security of the information released and the privacy of individuals about whom information is released.

(c) An individual who believes that criminal offender record information concerning him is inaccurate, incomplete, or maintained in violation of this Act shall, upon satisfactory verification of his identity, and in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

SECURITY, UPDATING AND PURGING

SEC. 4. Criminal justice information systems shall—

(a) Unless exempted under regulations prescribed under section 6, be dedicated to law enforcement purposes and be under the management control of a law enforcement agency;

(b) include operating procedures reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information; and

(c) include operating procedures designed to assure that criminal offender record information concerning an individual is removed from the active records, based on considerations of age, nature of the record and a reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(d) notwithstanding any provision of section 3 or of this section, or of any rule, regulation, or procedure promulgated pursuant thereto, any criminal justice information pertaining to juvenile delinquents which is maintained as part of a criminal justice information system shall be afforded, at least, the same protection and shall be subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use, security, updating, and purging, as it would be if it were not maintained as part of such system.

CIVIL AND CRIMINAL REMEDIES

SEC. 5. (a) A person with respect to whom criminal justice information willfully has been maintained, disseminated or used in violation of this Act shall have a civil cause of action against the person responsible for such violation and shall be entitled to recover from such person actual damages and reasonable attorney's fees and other litigation costs reasonably incurred.

(b) Whoever willfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this Act shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) No public official or agency shall be subject to any civil or criminal penalty under this section for the dissemination or use of information obtained or derived from sources accessible to the public.

(d) A good faith reliance upon the provisions of this Act or of applicable law governing maintenance dissemination or use of criminal justice information, or upon rules, regulations or procedures prescribed thereunder, shall constitute a complete defense to a civil or criminal action brought under this Act.

REGULATIONS

SEC. 6. The Attorney General is authorized, after appropriate consultation with representatives of State and local law enforcement agencies participating in information systems covered by this Act, to establish such rules, regulations and procedures as he may deem necessary to effectuate the provisions of this Act.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 20, 1971.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal entitled, "Criminal Justice Information Systems Security and Privacy Act of 1971." This proposal is in response to the Congressional mandate in section 7 of the Omnibus Crime Control Act of 1970 that the Law Enforcement Assistance Administration of this Department submit to the President and to the Congress recommendations for legislation to assist in the purposes of title I of the Omnibus Crime Control and Safe Streets Act of 1968 with respect to promoting the integrity and accuracy of criminal justice data collection, processing and dissemination systems funded in whole or in part by the Federal Government, and protecting the constitutional rights of all persons covered or affected by such systems. Also enclosed is a section-by-section analysis of the proposal.

The draft bill provides for stringent controls over the security of and access to criminal justice information systems, contains appropriate provisions for updating of information in them, for purging of outdated information, and for allowing individuals to have access to criminal history records concerning them, in order to insure that they are accurate and complete.

The draft bill also provides civil and criminal remedies against those who violate its provisions by unlawful dissemination or use of criminal justice information and authorizes the Attorney General to prescribe regulations to effectuate its provisions.

The proposed legislation would, I believe, protect the constitutional rights of persons affected by the collection and dissemination

of criminal justice information, while at the same time ensuring that the legitimate needs of law enforcement authorities for complete and accurate information may be satisfied. Its early and favorable consideration is urged.

The Office of Management and Budget has advised that enactment of this proposed legislation would be consistent with the Program of the President.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

SECTION-BY-SECTION ANALYSIS

Sec. 1 is the enactment and title clause.

Sec. 2. Definitions.

(1) "Criminal justice information system" is defined to include those systems for the collection, processing or dissemination of criminal justice information that are funded in whole or in part by the Law Enforcement Assistance Administration. Any system receiving LEAA support would be subject to the Act in its entirety, including any Federal participation. With respect to the term "equipment" in section 2(1), whenever equipment, such as central computer facilities, is shared with non-criminal justice systems, the term includes only those portions of the shared equipment which are used in the criminal justice system.

(2) "Criminal offender record information" is defined to include records of arrests and dispositions of criminal offenders. This information would include data necessary to identify individual offenders and provide a complete history of their involvement with the criminal justice system including arrest, arraignment, trial detention, parole and release. Intelligence and investigative reports are not included in "criminal offender record information".

(3) "Criminal intelligence information" includes investigatory information related to law enforcement and indexed or retrievable by individual name. Information from public sources is excluded so as to avoid the imposition of the Act's civil and criminal penalties for the dissemination or use of information that could be obtained from the newspapers or other public sources.

(4) "Criminal justice information" includes both criminal offender record information and criminal intelligence information.

(5) The definition of "law enforcement" is taken from section 601(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(6) "Law enforcement agency" includes only agencies that are principally engaged in law enforcement activities. This would include police forces, responsible for enforcement of the general criminal law, prosecutorial agencies, courts with criminal jurisdiction, correction departments (including probation), parole commissions, and governmental agencies that are engaged principally in the collection and provision of criminal justice information. The definiton would exclude railroad police, harbor police and other agencies that are not principally concerned with enforcing general criminal laws although they may have some limited law enforcement responsibilities.

Sec. 3. Access and Use.

Subsection (*a*) provides that only law enforcement agencies shall have direct access to systems covered by the Act and that information obtained from the system may be used only for law enforcement purposes or additional lawful purposes prescribed by the Attorney General by regulation. It is intended that agencies that use criminal justice information for valid non-law enforcement purposes, as for example, counterintelligence, personnel suitability, or security, may continue to do so, but they must obtain the information through a law enforcement agency.

Subsection (*b*) permits secondary dissemination for research purposes, under regulations prescribed by the Attorney General. Such regulations must establish procedures to assure data security and to protect individual privacy.

Subsection (*c*) permits an individual to review and copy his criminal offender record file upon proof of identity and compliance with published rules concerning time, place, fees and the like. This right to individual access does not apply to criminal intelligence information.

Sec. 4. Security, Updating and Purging.

Subsection (*a*) provides that all covered systems shall, unless exempted by regulations, be used only for law enforcement purposes and be under the management control of a law enforcement agency. This is designed to prevent commingling with non-law enforcement data and to reduce the possibility of unauthorized disclosure. To be "dedicated" to law enforcement, an information system, including all equipment and facilities, must be limited to the function of serving the criminal justice community and fully independent of non-criminal justice information systems. "Management control" means the authority to set and enforce policy concerning system operation and use, including the authority to employ and discharge personnel engaged in operating the system.

It is recognized that many State and local law enforcement agencies that may wish to participate in a covered system cannot now provide system facilities, such as computers and related equipment and facilities, that are dedicated solely to law enforcement purposes. The bill therefore permits the Attorney General to prescribe regulations exempting such agencies from this requirement.

Subsection (*b*) requires system procedures designed to minimize unauthorized disclosure and to assure regular and accurate updating of offender record information.

Subsection (*c*) is designed to assure that offender record information is removed from the active records after the passage of a sufficient period of time to indicate that the individual is no longer active in the criminal justice system—that is, deceased or rehabilitated. It would also assure that record information which is required by Federal or State law to have limited accessibility, such as on juvenile defenders, is maintained separately or is removed from the active records. Purged information would be available only to agencies having a specific need for it based on statute. An example of statutory need is found in the provisions of the Gun Control Act of 1968, under which a prior felony conviction, however remote, is the basis for criminal violations. See e.g., 18 U.S.C. 922(g)(1).

Subsection (*d*) is designed to insure that existing State statutes limiting access to and use of records of juvenile offenders are not superseded by this legislation.

Sec. 5. Civil and Criminal Penalties.

Subsection (*a*) provides for civil damages for willful unauthorized maintenance, disclosure or use of criminal justice information, either offender record information or intelligence information.

Subsection (*b*) provides criminal penalties of one year in jail or $1,000 fine, or both, for willful and knowing violations of the Act.

Subsection (*c*) provides that public officials and agencies shall not be subject to penalties for the dissemination or use of information that could be obtained from public sources. The purpose of this provision is to avoid the imposition of penalties for dissemination or use of information that is not in any way confidential, sensitive or peculiar to a covered system, but which could be easily obtained from public sources by anyone desiring it.

Subsection (*d*) provides a complete defense against any civil or criminal action for any law enforcement officer acting pursuant to the Act or applicable State laws, or to regulations issued thereunder. Thus, an officer could not incur a penalty for a disclosure or use of information in the course of performing his duties in good faith reliance upon rules or procedures adopted by his agency under the Act or laws and regulations thereunder.

Sec. 6. Regulations. This section authorizes the Attorney General to establish rules, regulations and procedures to implement the Act, after consultation with appropriate persons. Such regulations could cover such matters as the content of criminal offender record files (excluded offenses, data elements and format, for example), controls on the use of criminal intelligence information, the use of criminal justice information for other than law enforcement purposes, the use of such information for research purposes, procedures for granting access to individuals to examine and copy their criminal offender record files (including procedures for verification of identity), and exemption of participating agencies from the requirement that system equipment must be dedicated exclusively to law enforcement purposes. It is contemplated that in appropriate cases a partition or segment of a centralized computer will be permitted to be dedicated to a criminal justice system, provided that the personnel responsible for the use of the partition or segment are under the management control of a law enforcement agency.

By Mr. McGEE:

S. 2547. A bill for the protection of the bald and golden eagles. Referred to the Committee on Commerce.

Mr. McGEE. Mr. President, national attention was recently focused on the State of Wyoming when my Appropriations Subcommittee on Agriculture, Environmental, and Consumer Protection held hearings into the alleged slaughter of nearly 800 bald and golden eagles. Since these revelations, Americans from across the Nation have written me expressing genuine shock and dismay that such an act could have been perpetrated in an age of growing environmental enlightenment.

To gain some insight into the reasoning leading to these alleged eagle slaughters, I would like to reveal a conversation I had with one of the individuals who participated in the shootings from helicopters. I asked if at any time it was determined that a sufficient number of eagles had been destroyed so as to no longer pose a threat, real or imagined, to sheep. I further queried him as to when he thought it would be the time to refrain from destroying these magnificent birds. He replied, "Not until they're all gone." In other words, that individual was of the opinion that the only good eagle was a dead eagle.

As this controversy gained national prominence and the first shock waves of sensationalism began subsiding, there were those who tired of the publicity being generated. This is understandable, especially when the issue suddenly became a debate of personalities on the part of those involved. This resulted in a daily game of rhetorical ping-pong running the full gamut of denials, accusations, and counterallegations.

Perhaps the public may rightfully grow weary of the subject of eagle killings. However, I do not believe we can risk becoming insensitive to deeper implications involving the destruction of a species of wildlife.

I realize the simple gesture of increasing the penalties for killing or molesting bald and golden eagles will not solve all problems concerned with the survival of these birds. It can only be an effort to control deliberate acts of destruction.

As citizens concerned with enhancing the integrity of our environment and the survival of all living species, we must not limit our response to these revelations to shaking our heads and bemoaning the irresponsible actions of a few. We cannot allow ourselves to stop here. There are many other subtle acts of man which also pose threats to other species of wildlife, as well as our American eagles. We must also concern ourselves with these threats and give them considerable scrutiny and study.

Since 1940, Federal law has protected the bald eagle from deliberate destruction or molestation. At that time there was concern that the symbol of our Nation was headed toward the point of extinction. Most Americans, I believe, can readily identify the bald eagle with a majestic image of this country; it is a beautiful bird, graceful in flight, fierce when molested, faithful and protective of its young and indigenous to our land.

It is not difficult to paint this bird in almost sanctimonious terms. But in this age of increasing environmental awareness, the real question we should be asking about the bald eagle and the golden eagle—or wildlife in general, for that matter—is how the specie fits into the pattern of a living community. We are members of this community. Those of us who must spend much of our time in the crowded corridors and streets in many of our ill-designed cities know how enriching it is to get out into the country and enjoy the wilderness and a community of wildlife that is so very much our heritage as Americans—and as human beings.

While the zoos of our great cities may be interesting places to visit, they cannot, I believe, replace the actual experience of watching a deer, or an antelope, or an eagle move and live within its habitat. It is difficult to explain this almost intangible importance wildlife has. How can we answer the stockman who so bluntly asks, "Which is more important—an eagle or my livestock?" To those with a direct interest involved, the answer may be quite simple. For the public—which has an interest in both livestock and eagles—the answer is difficult. In the months to come, Mr. President, I hope to explore the many questions raised about predators and the so-called predator-control programs of the Federal Government. I am planning to conduct hearings soon on this subject and its many ramifications before my Appropriations Subcommittee.

My bill would amend the Bald and Golden Eagle Protection Act by increasing the maximum fine from the present amount of $500 to $5,000, and the maximum term of imprisonment from the present 6-month term to a term not to exceed 1 year. Furthermore, a second or subsequent conviction would carry a maximum penalty of $10,000 and imprisonment for a period not to exceed 2 years. Each violation of this act will constitute a separate offense.

The penalty section of my bill provides for an additional sanction which is not currently contained in the law. It requires that any lease, contract, license, permit or other agreement entered into by the Secretary of the Interior, the Secretary of Agriculture, or the head of any other Federal department or agency with any person involving or affecting the public lands shall contain a provision rendering such instrument void should the contracting party be convicted of any offense under this act. I want to emphasize that this provision is not intended to single out any particular individual or group but applies equally to all persons claiming an interest in Federal lands by an agreement or otherwise.

The increase of penalties alone, I realize, will not solve all problems which we have encountered in trying to protect and preserve the eagle from deliberate destruction by man. The increased penalties which my bill provides will, however, be a strong deterrent for those who might be tempted to disregard the Bald and Golden Eagle Protection Act and the intent of Congress to promote their own interests at the expense of the general public.

In conclusion, this legislation should be just one step in a search for a compatible relationship between man and his environment. We must not only learn to control our destructive tendencies, but we must also strive for the achievement and enhancement of those environmental values we are on the verge of losing forever.

By Mr. ROTH (for himself, Mr. TOWER, and Mr. BROOKE):

S. 2551. A bill to provide for a national program for an improved national securities transfer system, including a commercial securities depository corporation, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. ROTH. Mr. President, the securities business is emerging from its darkest period since the depression. At this watershed in the industry's history, it is vital that the lessons of the recent past remain fresh, not only in the minds of the industry, but also in the minds of Congress and the SEC. We in Congress and the Commission are by tradition and by law the diagnosticians rather than the surgeons of the industry's ailments. Therefore, these lessons are for us less a call for action than an inducement for a reexamination of the meaning of self-regulation. Our goal must be to insure that the securities industry has the strength and capacity it needs to avoid another period of instability during the 1970's and 1980's. The Securities Subcommittee is striving toward that goal during our extensive study of the industry's regulations and practices which began on July 1 of this year.

If it could be said that there is a single reason for our study, it would be our recognition of the need to safeguard the welfare of the small investors who own 70 percent of all stock in American corporations valued at over $683 billion. Just as the individual citizen is the cornerstone of a free society, so the individual investor constitutes the backbone of our free enterprise system. The gravest threat to that system is that practices prevalent in the securities industry will cut down the accessibility of the Nation's auction market to the average investor. I believe it essential to our system of a broadly based capitalism that the traditional openness of the securities markets, for long the envy of foreign exchanges, be preserved so that the maximum opportunity be given to the millions of individuals who want a share in the ownership of American business. The fastest way to condemn any system is to lead individuals to lose their incentive to preserve it. On the other hand, the best way to encourage a thriving free enterprise system with a maximum of individual participation, is to provide more efficient, cheaper, and more creative ways of allowing the public to gain a stake in the Nation's business.

To do so, the industry must first win the greater confidence of the small investor. Therefore, the industry must be strengthened; its regulations and practices reflect modern technology; its capital infrastructure reformed to meet the demands of the 1970's; and its continued profitability, regardless of fluctuations in volume, assured.

Nothing has done more to detract from the confidence of the average investor in our Nation's securities business than the revelation before the Subcommittee on Investigations of a national problem of securities thefts and losses. Some comprehensive and effective system is needed to safeguard the Nation's wealth in corporate stocks and bonds.

Given this immediate and pressing need for further reforms in the securities industry, the question arises whether the industry's own self-regulatory powers are capable of making them. The principle of self-regulation has long been a vital premise in Congress' continued rethinking of the Securities and Exchange Act of 1934. Long before the adoption of that act, the stock exchanges had evolved a system of internal government to regulate the admission and conduct of members. Congress chose not to preempt this self-regulation when it passed the acts of 1933 and 1934. The very purpose of those and later acts was not to replace industry regulation with Federal regulation, but to remedy deficiencies in the common law and state statutes governing deceit and fraud. In the series of acts and amendments since 1933, Congress has continually redefined the meaning of self-regulation; it has never contemplated abrogating it.

The reasons for this are sound ones. A self-regulatory approach involves industry directly in the regulatory process. One inevitable result of this involvement is that any changes are bound to be more pragmatic and hence more lasting. As John Kenneth Galbraith once said:

> Regulatory bodies, like the people who comprise them, have a market life cycle. In youth they are vigorous, aggressive, evangelistic, and even intolerant. Later they mellow, and in old age—often a matter of 10 or 15 years—they become, with some excep-

tions, either an arm of the industry they are regulating or senile.

The primary advantage of the self-regulatory approach is the reduced need for an extensive and sometimes cumbersome governmental bureaucracy and further commitments of the taxpayer's money. Therefore, any action taken by Congress to stimulate reforms should involve the industry directly and should provide for a maximum of industry-based control and participation in the spirit and within the framework of self-regulation.

It is apparent to me that the securities industry is unique among American industries in designing imaginative and constructive programs to bring about necessary reforms. It is widely recognized that these programs have relative strengths and weaknesses. The important thing at this time, however, is for the securities industry to achieve a unified approach that is effective in meeting the needs of brokerage customers in the 1970's.

Despite the many proposals for reform, so far efforts to restructure the securities industry have been fragmentary. Groups such as the North American Rockwell Corp., the Rand Corp., the New York Stock Exchange, the Banking and Securities Industries Committee, William McChesney Martin's task force, and even Congress itself have proposed plans ranging from complete abolition of the stock certificate to mere modification of existing processing procedures. As yet, however, no organization has been sufficiently representative of the interests involved nor sufficiently effective in securing their cooperation to bring about much-needed reforms in the securities industry.

The most basic need in the securities industry today is for an overall total systems approach to the stock certificate processing problem. Here the industry is faced with perhaps its greatest challenge, for estimated trading volume at the end of the decade far exceeds present certificate processing capacity. Last year the New York Stock Exchange predicted that the industry could handle a combined New York-AMEX volume of 24 million shares a day, plus a like volume on the over-the-counter market. This capacity will be surpassed long before the end of the decade, when, an industry spokesman recently predicted, average daily volume will lie between 27 to 36 million shares with occasional peak volumes as high as 63 million shares.

PROPOSALS FOR REFORM

Several proposals to deal with the time-consuming and inefficient procedures involved with the physical movement of securities merit the closest attention. One group of proposals advocates replacing the paper certificate with a machine readable certificate. The individuals who favor this approach are fully aware of the technical problems involved in designing a long-lasting punchcard which could not be counterfeited with as much difficulty as the present engraved certificate. In addition, under today's procedures, large portfolios of punched cards would still have to be transported much in the same fashion as stock certificates are today. This would be true also of the proposed "encoded" certificate or the present certificate to which machine readable information would be attached. In addition, the costs of conversion to a machine readable certificate, requiring a highly mechanized environment, may spell the end of the small and medium-size broker.

Other proposals would certainly appear to be extremely beneficial to the securities industry, but it is questionable whether they would be acceptable to all public customers. Thus, for example, there have been proposals to describe ownership of securities in U.S. corporations solely by bookkeeping positions in a manner similar to that used by bank checking services. In an industry where bookkeeping procedures are notoriously poor, however, these proposals would deprive the small investor of the stock certificate, the tangible evidence of his ownership. After the recent disclosures of widespread securities thefts and losses on Wall Street, it is understandable why customers of stock brokerage firms, in their desire for protection, should wish to possess their certificates and provide for their safekeeping. They should be allowed to do so at least in the short run.

Transition to the so-called certificateless society would in my opinion be desirable in the long run, however, provided that the industry develops procedures to furnish individual investors with more accurate periodic statements of their securities holdings and to reduce substantially the opportunities for fraudulent manipulation of records of securities holdings in the data banks of the industry's computers. In addition to these conditions, I believe that, in view of the findings of my former colleague in the House, Mr. Gallagher, any further efforts to concentrate data concerning ownership of securities should be combined with appropriate provisions for keeping such information on record with maximum confidentiality. It will be some years before these conditions can be fully satisfied and before the many State laws governing the paper certificate can be amended, so that the stock certificate may be replaced with a form of ownership similar to that of modern bank checking accounts. Such a development, however, would be most advantageous, not only for the securities business, which would be relieved of its present custodial responsibilities, but also for the millions of American investors who would benefit from a cheaper, safer, and more convenient form of ownership of their shares in American enterprise.

SECURITIES DEPOSITORY SYSTEM

Although development of a new form of securities ownership will take some years, major structural reforms in the securities business are needed now, to meet the needs of the immediate future. Thus, it is essential that we consider other possible areas for improvement in the near future. The recommendation of the Banking and Securities Industries Committee, composed of the presidents of the exchanges and other outstanding leaders in the securities business, to establish a national securities depository system deserves particular consideration.

Current depositories in operation, such as the Central Certificate Service of the New York-AMEX, maintain physical custody of securities on deposit from member brokerage houses. Transfer of ownership is made by bookkeeping entry on a net-by-net rather than transaction-by-transaction basis between brokerage houses. These systems permit large reductions in the volume of back office paperwork with resulting savings to member brokers.

Present depositories are hampered by incomplete bank participation and by separate member and nonmember recordkeeping systems. In addition, the physical movement of securities is such that another period of high trading volumes as in 1968 might well again suffocate Wall Street in its own paperwork. A national depository system, however, would effectively reduce by 50 percent the present physical movement of securities. The result would be a large savings to brokers in the form of lower overhead on certificate processing operations. The time for effecting transfers of ownership of securities would be reduced by 40 percent. In addition, the operating costs to brokers of such a system would be substantially lower due to the lesser need for physical movement of securities. This saving could be passed on to customers in the form of lower commission rates. Finally, there would be a far lesser risk of theft or loss of customer securities since fewer persons would be involved in handling certificates.

A significant advantage of a depository system is that possession of the stock certificate can be made optional. Those customers who demand the certificates may do so while those who have no real need for them will not use certificates. Since about 70 percent of present day customer transactions are institutional, I believe the optional approach can bring about a significant reduction in the number of stock certificates which must be processed by the industry.

A national depository system would be entirely compatible with the development of a machine readable certificate, if the industry should choose to embark in that direction. In fact, given the present procedures of transferring physical possession of the security, a depository system may be a necessary prerequisite to control the environment in which a machine readable certificate would be used.

Most importantly, a national depository system of the kind I have described would be an important step in the direction of what I believe is the ultimate solution to Wall Street's back office problems; namely, a new form of ownership of securities. The nationwide communications network required to allow transfer of ownership on the books of the depository system could eventually become the technological and capital base for a nationwide bookkeeping net work in the "certificateless society." Furthermore, the joint efforts required among all sectors of the industry to implement this idea may well bring about a new spirit of determination and cooperation, new approaches to the industry's problems and new forms of organization to achieve industrywide and nationwide objectives.

NATIONAL SECURITIES CORPORATION

In order to focus the industry's efforts at solving what has become a national problem; namely, the need for safer, cheaper, and more efficient means of transferring ownership in American business enterprise, I am proposing the establishment of a national program to bring into operation a nationwide system for transferring securities ownership.

This program will operate in two stages: First, it will establish a COMSAT-type, privately owned and funded, National Securities Corp. This Corporation will, as soon as practicable, commence operation as a nationwide depository system. It will act as a comprehensive settlement system, maintaining physical custody of corporate stocks and bonds placed on deposit by the Nation's financial institutions in decentralized regional depositories. Transfer of ownership of certificates will be made by bookkeeping entry, much as the Federal Reserve System accomplishes for deposits of member banks.

While direct depositors in the system will be limited to member firms of the national exchanges and the larger institutional investors, any customer of a member firm would be permitted as now to leave his certificate with the firm, which could then deliver it to the regional depository for safekeeping. When the customer decided to sell his security, the change in ownership would be reflected on the records of the corporation and the firm for the purchasing customer would be credited for the security. Thus, the functions of settling and clearing securities transactions, presently performed by brokerage houses and by limited depositories would be assumed by the Corporation. Whether the Corporation would also assume the duties of existing transfer agents; namely, insurance and cancellation of certificates, is a matter which I feel deserves further consideration and which I would hope the Securities Subcommittee would consider during hearings on this bill.

Establishment of this depository system would, as I have mentioned earlier, substantially increase the certificate processing capacity of the securities business. Significant savings in operating costs would accrue to member depositors. Opportunities for theft and loss of stock certificates would be substantially diminished. Finally, the national securities depository system will allow customers of brokerage houses to maintain physical possession of their stock certificates, at least until the securities business develops procedures for new forms of ownership that are safe, cheap, and efficient.

No solution to the industry's certificate process problem is without its relative weaknesses. To permit full participation of banks in a national depository systems, laws in 50 States will have to be amended. To permit pledging of securities on deposit as collateral for loans, laws governing the stock certificate may have to be changed. These impediments, however, would neither frustrate the establishment of a national depository system nor prevent the significant advantages which I have mentioned. To deal with these legal problems, I propose a National Commission on Uniform Securities Laws, composed of representatives from the securities business, from those charged with the administration of State securities laws, from organizations which represent the private investor, from the banking industry and from the Securities and Exchange Commission. The National Commission will make recommendations to State legislators to facilitate the establishment of an effective national securities depository system.

The National Securities Corporation, the privately owned corporation which would be created if this bill becomes law, would be charged with the task of conducting basic research into certificateless means of owning securities similar to the present system of owning many Government securities by bookkeeping entry. Once safe, efficient and confidential means of representing ownership of securities without the need for the stock certificate are developed, then the second stage of the national program would go into effect. The National Securities Corporation would then gradually convert its operations to handle certificateless means of ownership. Since this is an extremely complex problem, which will require years of further effort by the securities industry, the computer industry, and Federal and State legislatures, some central facility, such as the National Securities Corporation, should be established to devote to this task a level of attention, structure and effort beyond what it is now receiving.

I propose these two new structures, the National Securities Corporation and the National Commission on Uniform Securities Laws, with due regard for the tremendous efforts made thus far by all the groups which have given the problem their consideration— the stock exchanges, the National Association of Securities Dealers, the Association of Stock Exchange Firms, the American Bar Association, the Banking and Securities Industries Committee, and many others. They have contributed immensely to our comprehension of the problems and approaches to their solutions. It is my belief that these national organizations which I have proposed will serve to provide a useful forum where these groups may coordinate their efforts in the future.

The task of establishing a national system for transferring securities ownership will require the close cooperation of all these groups. Because of the many technical complexities involved in such a task, the Corporation which I have proposed cannot be said to be in its final form. Rather, I would hope that during the hearings on the problems in the securities business this month the Securities Subcommittee will consider this proposal and solicit the recommendations of interested parties on appropriate substantive changes. Recently, I myself have received the views of a number of industry spokesmen who have indicated their interest in this proposal. Hearings on this proposal would in themselves serve to stimulate the interest of the various industry groups, whom I urge to continue their efforts at bringing about reforms.

Mr. President, our Nation's securities markets lie at the very pulsebeat of the Nation's economy. Failure to act now during this period of relative stability in the securities business may well culminate in another period when the business is choked by its own sales efforts. Not only the securities business but also the national economy itself is at stake. Responsible and careful planning now by the Congress is essential to assist the banking and securities industries to meet the future needs of the Nation's 30 million direct stockholders and 106 million individuals who own stock indirectly through pension and insurance plans and mutual funds. Mr. President, I believe the establishment of the national program for an improved means of transfering securities ownership will afford the Nation's banking and securities industries the opportunity to meet those needs, to avoid another period of instability, and to safeguard the Nation's financial assets.

Mr. President, I ask unanimous consent that a copy of this bill be printed in the RECORD immediately following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2551

A bill to provide for a national program for an improved national securities transfer system, including a commercial securities depository corporation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Securities Act".

TITLE I—NATIONAL SECURITIES CORPORATION

SHORT TITLE

SEC. 101. This title may be cited as the "National Securities Corporation Act".

DECLARATION OF POLICY AND PURPOSE

SEC. 102. (a) The Congress declares that it is the policy of the United States to establish, in cooperation with private industry, a national program for an improved national securities transfer system, which will facilitate the ownership of business enterprise by the people of the United States, and which will promote the stability of the securities business vital for the national economy.

(b) To carry out this policy, it is the purpose of this title to establish a National Securities Corporation which shall—

(1) establish and operate, at the earliest practicable date, a national securities depository system to provide national securities depository services until methods and procedures can be developed and implemented to evidence ownership of securities by means other than possession of paper certificates;

(2) establish, at the earliest practicable date, a national securities transfer system involving certificateless means of securities ownership;

(3) upon approval of the board of directors of the Corporation, implement recommendations of the Commission appointed under title II of this Act;

(4) adopt and utilize the benefits of modern technology in providing securities transfer services in a safe and efficient manner at a reasonable cost; and

(5) promote competition and growth in the securities industry by providing for the safe, efficient, and economic transfer of securities through a national securities transfer system.

(c) Nothing in this title shall be construed to prohibit the development or operation of additional securities transfer systems.

ESTABLISHMENT

SEC. 103. (a) There is authorized to be established in accordance with section 104 of this title, a National Securities Corporation (hereinafter referred to as the "Corporation") which shall be a corporation for profit. The right to repeal or amend this title is expressly reserved.

(b) Except as otherwise provided in this title, the Corporation shall be subject to the District of Columbia Business Corporation Act. Subject to the provisions of section 104 of this title, the articles of incorporation shall provide for cumulative voting by the shareholders under section 27(d) of the District of Columbia Corporation Act, and the rights of shareholders under section 45(b) of such Act shall apply to all shareholders of the Corporation, notwithstanding the percentage limitations contained in such section.

MANAGEMENT

SEC. 104. (a) Except as otherwise provided in this title, the management of the Corporation shall be vested in a board of directors which shall consist of 9 members of which—

(1) three shall be appointed by the President, by and with the advice and consent of the Senate;

(2) three shall be elected by shareholders of the Corporation who are also direct customers; and

(3) three shall be elected by the shareholders who are not direct customers.

(b) Members appointed by the President shall serve at the pleasure of the President. Members elected by the shareholders shall stand for election at each annual meeting of the shareholders.

(c) No individual who is not a citizen of the United States shall serve as an officer, director, or employee of the Corporation. No such officer, director, or other employee shall receive any salary from any other source during the term of his service to the Corporation.

(d) The President is authorized to appoint, by and with the advice and consent of the Senate, 9 incorporators who shall serve as members of the board of directors until the first annual meeting of the shareholders. The incorporators are authorized to file articles of incorporation, issue stock, and take such other actions as may be necessary to organize the Corporation.

SPECIAL PURPOSES AND POWERS

SEC. 105. (a) To carry out the purposes of this title, the Corporation is authorized to—

(1) develop and put into operation a national system for transferring ownership of securities;

(2) provide for safe and efficient handling of securities placed in or removed from that system and recording of ownership of securities on the records of the Corporation;

(3) adopt procedures to facilitate the trading of securities on deposit or on record without the necessity for physical delivery or possession of those securities;

(4) adopt effective methods for insuring the confidentiality of information obtained by the Corporation regarding the ownership of securities placed on deposit or on record in the transfer system;

(5) conduct research and development related to its mission;

(6) operate and maintain the securities transfer system and charge fees for operation and maintenance; and

(7) take such other actions as may be necessary.

(b) The Corporation shall furnish to each direct consumer a periodic statement of the daily transactions and the opening and closing balances with respect to that customer's account.

(c) The Corporation is authorized to provide additional services, including dividend and other reporting services to its direct customers, and to act as an agent for such customers in receiving dividends.

(d) Nothing in this title shall be construed—

(1) to require any person to give up physical custody of any securities owned by him, until such time as the Securities and Exchange Commission determines there exist reasonably safe and confidential procedures for certificateless recording ownership of securities;

(2) to prevent any person from obtaining physical possession of any securities owned by him until that time; and

(3) to annul, alter, effect, or repeal the laws of any State relating to transactions in securities except as specifically provided in this title.

CAPITALIZATION

SEC. 106. (a) The Corporation is authorized to—

(1) issue and have outstanding, in such amounts as it shall determine, one class of common stock which shall have no par value, except as provided in subsection (b), shares of such stock may be issued to and held by any person; and

(2) issue and have outstanding, in such amounts as it shall determine, bonds, debentures, and other instruments evidencing debt.

(b)(1) For the purpose of this subsection, (A) "direct customer" means any person authorized under section 108 of this title to maintain a securities account with the Corporation, and (B) "private investor" means any person who is not a direct customer.

(2) Fifty percent of the Corporation's common stock shall be reserved for purchase by direct customers. At no time shall the aggregate of the common stock held or controlled by direct customers exceed the aggregate of such stock held or controlled by private investors.

(3) Not more than 5 percent of the shares of the Corporation's common stock shall be held or controlled by only one direct customer or by any one private investor.

(4) Not more than an aggregate of 5 percent of the Corporation's common stock shall be held or controlled by individuals who are directors, officers, or employees of direct customers.

(c) All capital transactions under this section shall be conducted in a manner which insures the widest possible distribution of the Corporation's securities.

(d) The provisions of the Securities Act of 1933 shall apply to all capital transactions under this section.

INITIAL BORROWING

SEC. 107. To enable the Corporation to carry out its purposes, the Corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $1,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under that Act, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection.

All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

REGULATION BY SECURITIES AND EXCHANGE COMMISSION

SEC. 108. (a) The Securities and Exchange Commission shall prescribe rules and regulations relating to—

(1) the types of securities which may be placed in the Corporation's transfer system;

(2) the terms and conditions upon which services of the Corporation shall be furnished;

(3) the fees and charges which may be received by the Corporation for its services;

(4) the operation of the Corporation's transfer system to insure compliance with the provisions of this title and with the laws of any State in which the Corporation does business; and

(5) such other matters as may be necessary.

(b) In authorizing any person to be a direct customer for the purposes of section 106 of this title, the Commission shall take into account—

(1) the number of securities held and the securities trading volume experienced by that person;

(2) the ability of that person to adapt to a national transfer system with minimal disruption and dislocation of his business; and

(3) the extent to which the participation of that person in the transfer system would carry out the policies of this title.

(c) The Commission may make such examinations and inspections of the Corporation and require the Corporation to furnish it with such reports and records or copies thereof as the Commission may consider necessary or appropriate in the public interest or to effectuate the purposes of this title.

CORPORATION AS A CLEARING CORPORATION

SEC. 109. The Corporation shall be held and considered to be a clearing corporation for the purposes of the laws of the United States or of any State relating to investment securities.

REPORTS

SEC. 110. (a) The Corporation shall transmit to the Congress and to the Securities and Exchange Commission, not later than 60 days after the end of each fiscal year, an annual report of its operations and activities.

(b) The Securities and Exchange Commission shall transmit to the Congress and to the President, not later than 90 days after the end of each fiscal year, a report on the operations and activities of the Corporation during the preceding fiscal year.

(c) Each such report shall include financial statements setting forth the financial position of the Corporation at the end of that fiscal year and the results of its operations (including the sources and applications of its funds) for that fiscal year. The financial statements so included shall be examined by an independent public accountant or firm of independent public accountants, selected by the Corporation and satisfactory to the Commission, and shall be accompanied by the report thereon of such accountant or firm.

(d) Any such report may contain recommendations for such legislative or other governmental action as may be appropriate to carry out the purposes of this title.

TITLE II—COMMISSION ON UNIFORM SECURITIES LAWS

ESTABLISHMENT

SEC. 201. There is established the National Commission on Uniform Securities Laws (hereinafter referred to as the "Commission").

MEMBERSHIP AND ADMINISTRATION

SEC. 202. (a) The Commission shall consist of the President of the National Securities Corporation and 12 members to be appointed by the President as follows:

(1) two from among persons who represent the securities industry;

(2) two from among persons who represent organizations or associations which are engaged in the preparation of uniform State laws;

(3) two from among persons who represent the private investor:

(4) two from among persons who administer State laws relating to securities;

(5) two from among persons who represent the banking industry; and

(6) two representatives of the Securities Exchange Commission.

(b) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

DUTIES

SEC. 203. (a) The Commission shall—

(1) determine the necessity for revising State laws to facilitate the establishment of an effective national securities depository system;

(2) furnish advice and assistance in the planning (development, and execution of methods to evidence ownership of securities by means other than paper certificates.

(3) prepare, in cooperation with such other organizations or persons as may be appropriate, such amendments or revisions to those laws as may be necessary; and

(4) make and circulate such reports, drafts, or other papers as may be necessary to facilitate the enactment of any such amendments or revisions in any State.

(b) The Commission shall make such interim reports of its findings and recommendations as it deems advisable, and it shall make a final and complete report of its findings and recommendations to the Congress and the President not later than February 1, 1975. Sixty days after the submission of its final report, the Commission shall cease to exist.

POWERS

SEC. 204. Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $100 a day for individuals; and

(3) hold such hearings and sit and act at such times and places as the Commission may deem advisable.

COMPENSATION

SEC. 205. (a) A member of the Commission who is otherwise an officer or employee of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties of the Commission.

(b) A member of the Commission from private life shall receive $125 per diem when engaged in the actual performance of duties of the Commission, and shall receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

ASSISTANCE OF GOVERNMENT AGENCIES

SEC. 206. Each department, agency, and instrumentality of the United States and of any State, is urged to furnish to the Commission, upon request made by the Chairman, such information and services as the Commission deems necessary to carry out its functions under this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 207. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

Mr. ROTH. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Texas (Mr. TOWER) relative to the motive invoked in the bill introduced today by me regarding the establishment of procedures for modernizing the process of transferring securities.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR TOWER

Mr. President, I would like to express my support for the motive involved in the legislation introduced today by the Senator from Delaware (Mr. Roth), regarding the establishment of procedures for modernizing the process of transferring securities. Much of the trouble faced by the securities industry in recent years has originated in the archaic process of physically transferring paper certificates from issuer to intermediaries and from intermediaries to purchasers, and so on. Adherence to this process has brought about paperwork backlogs and associated costs that have ruined some broker-dealers, caused inestimable discomfort and concern to millions of individual investors, and impaired the functioning and liquidity of the capital markets.

We have the technology to overcome this type of impediment to the smooth functioning of the capital markets, and it is now simply a problem of devising a good clearinghouse system that will adequately protect and facilitate the interests of the investing public and that will satisfactorily and equitably involve the various elements of the financial community which actually constitute the functioning securities markets. I, myself, have no particular preference at this time as to the actual form that this clearinghouse system takes. I understand that the New York Stock Exchange currently is involved in a major operation to work out the nucleus of such a clearinghouse, and I applaud their efforts in this direction. The Committee on Banking, Housing and Urban Affairs will be investigating the clearinghouse question in hearings this fall, and I encourage the interested firms and associations in the financial community to take a vital interest in making their ideas on this important problem known to the Committee.

It may well be that the industry, with the cooperation of the Securities and Exchange Commission, will be able to work out a clearing-house system without the need for further Federal legislation, a system that meets both the need for efficiency and the goal of protecting the interests of the investing public. I view the bill introduced by my able colleague from Delaware as a means of focusing attention on the issue and as a vehicle, however modified it might possibly become after hearings on the issue, for any Federal legislation that might later be needed to facilitate this modernization effort.

By Mr. BAYH:

S. 2552. A bill to prohibit discrimination on the grounds of sex by institutions of higher education, to authorize intervention by the Attorney General in suits alleging sex discrimination, and for other purposes. Referred to the Committee on Labor and Public Welfare.

SENATOR BAYH INTRODUCES BILL TO PROHIBIT SEX DISCRIMINATION BY INSTITUTIONS OF HIGHER EDUCATION

Mr. BAYH. Mr. President, just before the recess the Senate debated an amendment which I introduced to the higher education bill—an amendment which would have guaranteed that equality of educational opportunity not be denied on the basis of sex. This was a carefully drafted amendment, tailored specifically to the parliamentary needs of that day. Yet, despite the fact that the higher education bill's whole thrust was toward assuring equality of access to education to all citizens, my amendment was ruled out of order because the question of nondiscriminatory admissions was supposedly not germane to the subject under discussion.

Needless to say, I was shocked by this ruling of the Parliamentarian. As I said on the floor then, the amendment related directly to the purpose of the bill being debated. The bill itself dealt with equal access to education and, I think we can all agree that such access should not be denied because of either poverty or sex. I could not then—and I cannot now—comprehend the basis for that decision. While there is no point in refighting old battles, I do not plan to give up this effort. Today I am submitting essentially the same amendment in the form of a bill.

As we seek to help those who have been the victims of economic discrimination, let us not forget those Americans who have been subject to other, more subtle but still pernicious forms of discrimination. Let us insure that no American will be denied access to higher education because of race, color, religion, national origin, or sex. The bill I am submitting today will guarantee that women, too, enjoy the educational opportunity every American deserves.

The problem is greater than most of us realize. While over 50 percent of our population is female, there is no effective protection for them as they seek admission to and employment in educational facilities. The antidiscrimination provisions of the Civil Rights Act of 1964 do not deal with sex discrimination by our institutions of higher learning. Indeed, title IV of the act, dealing with discrimination in education, expressly provides that—

> Nothing in this title shall prohibit classification and assignment for reasons *other than* race, color, religion, or national origin.

We allow this gap in our civil rights laws to continue despite the fact that the evidence of sex discrimination is truly appalling. While racial discrimination

has been explicitly prohibited for nearly 20 years, only a few months ago the Supreme Court summarily affirmed a lower court decision upholding the constitutionality of a State's maintenance of a branch of its public university system on a sexually segregated basis.

Between January 1970 and March 1971, the Women's Equity Action League found it necessary to file charges of sex discrimination against over 250 colleges and universities—fully 10 percent of all our institutions of higher learning. Among the respondents in this suit are the entire public college and university systems of Florida, California, and New Jersey.

How equal is educational opportunity when admissions brochures for a State university can explicitly state—as one did recently:

> Admission of women on the freshmen level will be restricted to those who are especially well qualified?

How can we possibly justify an arbitrary and compulsory ratio of two and one-half men to every woman at a State university? How can we tolerate discrimination by a land grant college that refuses all women admission to regular academic sessions unless they are related to employees or students and are pursuing a course of study otherwise unavailable?

Today women seeking employment in higher education face an array of obstacles almost as insuperable as those which used to face blacks. WEAL has compiled statistics indicating the Columbia University annually awards 24 percent of its doctorates to women, but that it has awarded 2 percent of its tenured faculty positions to females; and the last time the Department of Psychology at Berkeley hired a woman was in 1924. In short, just as in other professions an old axiom applies: the higher the rank, the fewer the women.

And this is not, I submit, because women are uninterested in pursuing such careers. Most female Ph. D.'s do not marry and give up their careers; 91 percent of the women with doctorates are working today. Moreover, in a study of 2,000 women 10 years after they have received their doctorates, 79 percent had yet to interrupt their careers. The diligence of these women is worthy of note: By way of contrast 10 percent more men than women had interrupted their careers within 10 years of completing their doctoral program.

If Congress is to solve this knotty problem, if the benefits of a free and open society are to be extended to all Americans, now is the time to act. I do hope that my colleagues will give this issue their most careful attention, and that, after having looked over the provisions of my bill, they will lend their support to this important cause.

As one Member of this body who has been and is greatly concerned about the equality of opportunity for women, I would not want this argument to devolve into disputes of whether this would require equal restrooms. It seems to me that such disputes are merely strawmen to take our attention away from the real inequities that do in fact exist.

I doubt if most of our male citizens, in particular male legislators, realize the degree to which these inequities exist. Let me give but a few examples of these inequities.

In the 1968 period, there were 393,000 male bachelor's degrees conferred and 279,000 female degrees conferred. As the quality of the degree increases the discrimination increases, master's degrees for the same year show 114,000 men and 63,000 women. Among law students, only 5.9 percent were women, and among medical students, only 8.3 percent.

If there is any area in which we have a shortage, and a problem with which we have been unable to come to grips, it is in providing adequate medical care to all of our people.

My proposed bill contains three major provisions, which I would like to describe briefly. First, nondiscrimination by recipient institutions. Section 1550 expressly prohibits discrimination on account of sex—including the denial of admission or benefits—by any public institution of higher education or any institution of graduate education receiving Federal educational financial assistance. I have included in this bill the modification suggested during the floor debate by the able Senator from New York (Mr. JAVITS). This modification gives the relatively small number of single sex public institutions of higher education which would be covered by this bill a year's delay before this part of the bill is effective. In addition, they would have 6 more years in which to comply with the bill's requirements of equal access. This delay, let me hasten to add, would only apply in the case of an institution which is carrying out a plan approved and supervised by the Commissioner of Education for changing from admitting only students of one sex to admitting students of both sexes.

Sections 1551 through 1553 contain enforcement, judicial review, and other technical provisions for the implementation of the section 1550 prohibition. These provisions are similar to those provided under title VI of the 1964 Civil Rights Act—forbidding discrimination in federally assisted programs—which does not presently include a prohibition on sex discrimination.

Second, suits and intervention by Attorney General. Section 1554 would amend title IV of the 1964 Civil Rights Act by adding discrimination by reason of sex to the present grounds—race, color, religion, or national origin—on which the Attorney General can initiate legal proceedings on behalf of individuals alleging that they have "been denied admission to or not permitted to continue in attendance at a public college." Title IV requires the Attorney General to believe that the claim is meritorious, that the complainants are otherwise unable to prosecute it, and that the institution of the action will materially further the orderly elimination of such discrimination. In order to conform with the changes described above, section 902 of the Civil Rights Act is also amended by extending to cases of sex discrimination the Attorney General's power to intervene, on behalf of the United States, in such litigation already commended by others. These amendments were recommended by President Nixon's Task Force on Women's Rights and Responsibilities in its report, "A Matter of Simple Justice," April 1970.

Third, study by Commissioner of Education. Section 1555 requires the Commissioner of Education to conduct a nationwide survey of both public and private higher educational institutions—including institutions for technical and vocational training—to determine the extent to which equality of educational opportunity is being denied to citizens of the United States by reason of sex. Within 12 months from the date of enactment, the Commissioner must submit to Congress the results of his survey along with recommendations for legislation to guarantee equality of opportunity in higher education between the sexes. This amendment was also recommended by President Nixon's Task Force on Women's Rights and Responsibilities.

I urge the Senate to adopt this bill and to take a forward step, both in higher education and in protecting equal rights for all Americans.

I ask unanimous consent that the text of my bill (S. 2552), a summary and excerpts from President Nixon's task force report be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2552

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Women's Educational Equality Act."

SEC. 2. Title 20 of the United States Code is amended by adding at the end thereof, the following new chapter:

"CHAPTER 36—NONDISCRIMINATION ON THE GROUND OF SEX

"SEC. 1550. No person in the United States shall, on the ground of sex, be excluded from participation in, be denied the benefits of or be subject to discrimination under any program or activity conducted by a public institution of higher education, or any school or department of graduate education, which is a recipient of Federal financial assistance for any education program or activity, provided that this subsection shall not apply in regard to admissions for one year from the date of enactment, nor for six years thereafter in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes without discrimination but only if it is carrying out a plan for such change, approved by the Commissioner of Education, which shall contain requirements for such reports to the Commissioner as will enable him to determine whether the plan is being carried out.

"SEC. 1551. (a) The Secretary of Health, Education, and Welfare, in extending Federal financial assistance to any education program or activity subject to the provisions of section 1551, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1551 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the law authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become

effective unless and until approved by the President.

"(b) Compliance with any requirement adopted pursuant to subsection (a) may be effected (1) by the termination of or refusal to grant or to continue assistance to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement but such termination or refusal shall be limited to the particular political entity, or part thereof, or has been made and such noncompliance has been so found or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the Secretary has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means.

"(c) In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to subsection (a), the Secretary shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

"SEC. 1552. Any department or agency action taken pursuant to section 1551 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any Federal department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1551, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of the chapter.

"SEC. 1553. Nothing in this title shall add to or detract from any existing authority with respect to any education program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

"SUITS AND INTERVENTION BY THE ATTORNEY GENERAL

"SEC. 1554. Section 401(b), 407(a)(2), 410 and 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000c(b), 2000c-6(a)(2), 2000c-9, 2000h-2) are each amended by inserting after 'religion', the following: 'sex,'.

"STUDY BY COMMISSIONER OF EDUCATION

"SEC. 1555. The Commissioner of Education shall conduct a survey of the higher educational institutions throughout the country, including both public and private educational institutions, at all levels, and institutions for technical and vocational training as well as academic institutions, in order to determine the extent to which equality of educational opportunity is being denied to citizens of the United States by reason of sex. Within 12 months from the date of enactment of this Act the Commissioner shall submit to Congress the results of his survey along with recommendations for legislation to guarantee equality of opportunity in post-secondary education between the sexes. There are authorized to be appropriated such funds as are necessary to carry out the purposes of this section."

SUMMARY OF PROPOSED TITLE VI—NONDISCRIMINATION ON THE GROUND OF SEX

Nondiscrimination By Recipient Institutions. Section 601 expressly prohibits discrimination on account of sex—including the denial of admission or benefits—by any public institution of higher education or any institution of graduate education receiving Federal educational financial assistance. As to admissions the applicability of the section is delayed for up to seven years in the case of any institution carrying out a plan, approved and supervised by the Commissioner of Education, for changing from admitting only students of one sex to admitting students of both sexes.

Sections 602–604 contain enforcement, judicial review and other technical provisions for the implementation of the section 601 prohibition. These provisions are similar to those provided under Title VI of the 1964 Civil Rights Act—forbidding discrimination in federally assisted programs—which does not presently include a prohibition on sex discrimination.

Suits and Intervention By Attorney General. Section 605 would amend Title IV of the 1964 Civil Rights Act by adding discrimination by reason of sex to the present grounds (race, color, religion, or national origin) on which the Attorney General can initiate legal proceedings on behalf of individuals alleging that they have "been denied admission to or not permitted to continue in attendance at a public college." (Title IV requires the Attorney General to believe that the claim is meritorious, that the complainants are otherwise unable to prosecute it, and that the institution of the action will materially further the orderly elimination of such discrimination.) In order to conform with the changes described above, Section 902 of the Civil Rights Act is also amended by extending to cases of sex discrimination the Attorney General's power to *intervene,* on behalf of the United States, in such litigation already commenced by others. These amendments were recommended by President Nixon's Task Force on Women's Rights and Responsibilities in its report, "A Matter of Simple Justice," April 1970.

Study by Commissioner of Education. Section 606 requires the Commissioner of Education to conduct a nationwide survey of both public and private higher educational institutions (including institutions for technical and vocational training) to determine the extent to which equality of educational opportunity is being denied to citizens of the United States by reason of sex. Within 12 months from the date of enactment, the Commissioner must submit to Congress the results of his survey along with recommendations for legislation to guarantee equality of opportunity in higher education between the sexes. This amendment was also recommended by President Nixon's Task Force on Women's Rights and Responsibilities.

A MATTER OF SIMPLE JUSTICE

(Excerpts from the Report of The President's Task Force on Women's Rights and Responsibilities, April 1970)

PRESIDENTIAL TASK FORCE ON WOMEN'S RIGHTS AND RESPONSIBILITIES

WASHINGTON, D.C.,
December 15, 1969.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As President of the United States, committed to the principle of equal rights for all, your leadership can be crucial to the more than half our citizens who are women and who are now denied their full constitutional and legal rights.

The quality of life to which we aspire and the questioning at home and abroad of our commitment to the democratic ideal make it imperative that our nation utilize to the fullest the potential of all citizens.

Yet the research and deliberation of this Task Force reveal that the United States, as it approaches its 200th anniversary, lags behind other enlightened, and indeed some newly emerging, countries in the role ascribed to women.

Social attitudes are slow to change. So widespread and pervasive are discriminatory practices against women they have come to be regarded, more often than not, as normal. Unless there is clear indication of Administration concern at the highest level, it is unlikely that significant progress can be made in correcting ancient, entrenched injustices.

American women are increasingly aware and restive over the denial of equal opportunity, equal responsibility, even equal protection of the law. An abiding concern for home and children should not, in their view, cut them off from the freedom to choose the role in society to which their interest, education, and training entitle them.

Women do not seek special privileges. They do seek equal rights. They do wish to assume their full responsibilities.

Equality for women is unalterably linked to many broader questions of social justice. Inequities within our society serve to restrict the contribution of both sexes. We have witnessed a decade of rebellion during which black Americans fought for true equality. The battle still rages. Nothing could demonstrate more dramatically the explosive potential of denying fulfillment as human beings to any segment of our society.

What this Task Force recommends is a national commitment to basic changes that will bring women into the mainstream of American life. Such a commitment, we believe, is necessary to healthy psychological, social and economic growth of our society.

The leader who makes possible a fairer and fuller contribution by women to the nation's destiny will reap dividends of productivity measurable in billions of dollars. He will command respect and loyalty beyond measure from those freed from second-class citizenship. He will reaffirm, at a time of renewed worldwide emphasis on human rights, America's fitness for leadership in the community of nations.

His task will not be easy, for he must inspire and persuade government and the private sector to abandon outmoded attitudes based on false premises.

Without such leadership there is danger of accelerating militancy or the kind of deadening apathy that stills progress and inhibits creativity.

Therefore, this Task Force recommends that the President:

1. Establish an Office of Women's Rights and Responsibilities, whose director would serve as a special assistant reporting directly to the President.

2. Call a White House conference on women's rights and responsibilities in 1970, the fiftieth anniversary of the ratification of the suffrage amendment and establishment of the Women's Bureau.

3. Send a message to the Congress citing the widespread discriminations against women, proposing legislation to remedy these inequities, asserting Federal leadership, recommending prompt State action as a corollary, and calling upon the private sector to follow suit.

The message should recommend the following legislation necessary to ensure full legal equality for women:

a. Passage of a joint resolution proposing the equal rights amendment to the Constitution.

b. Amendment of Title VII of the Civil Rights Act of 1964 to (1) remove the burden of enforcement from the aggrieved individual by empowering the Equal Employment Opportunity Commission to enforce the law, and (2) extend coverage to State and local governments and to teachers.

c. Amendment to Titles IV and IX of the Civil Rights Act of 1964 to authorize the Attorney General to aid women and parents of minor girls in suits seeking equal access to

public education, and to require the Office of Education to make a survey concerning the lack of equal educational opportunities for individuals by reason of sex.

d. Amendment of Title II of the Civil Rights Act of 1964 to prohibit discrimination because of sex in public accommodations.

e. Amendment of the Civil Rights Act of 1957 to extend the jurisdiction of the Civil Rights Commission to include dental of civil rights because of sex.

f. Amendment of the Fair Labor Standards Act to extend coverage of its equal pay provisions to executive administrative, and professional employees.

g. Amendment of the Social Security Act to (1) provide benefits to husbands and widowers of disabled and deceased women workers under the same conditions as they are provided to wives and widows of men workers, and (2) provide more equitable retirement benefits for families with working wives.

h. Adoption of the liberalized provisions for child care in the family assistance plan and authorization of Federal aid for child care for families not covered by the family assistance plan.

i. Enactment of legislation to guarantee husbands and children of women employees of the Federal government the same fringe benefits provided for wives and children of male employees in those few areas where inequities still remain.

j. Amendment of the Internal Revenue Code to permit families in which both spouses are employed, families in which one spouse is disabled and the other employed, and families headed by single persons, to deduct from gross income as a business expense some reasonable amounts paid to a housekeeper, nurse, or institution for care of children or disabled dependents.

k. Enactment of legislation authorizing Federal grants on a matching basis for financing State commissions on the status of women.

4. The executive branch of the Federal government should be as seriously concerned with sex discrimination as with race discrimination, and with women in poverty as with men in poverty. Implementation of such a policy will require the following Cabinet-level actions:

a. Immediate issuance by the Secretary of Labor of guidelines to carry out the prohibition against sex discrimination by government contractors, which was added to Executive Order 11246 in October 1967, became effective October 1968, but remains unimplemented.

b. Establishment by the Secretary of Labor of priorities, as sensitive to sex discrimination as to race discrimination, for manpower training programs and in referral to training and employment.

c. Initiation by the Attorney General of legal actions in cases of sex discrimination under section 706(e) and 707 of the Civil Rights Act of 1964, and intervention or filing of amicus curiae briefs by the Attorney General in pending cases challenging the validity under the 5th and 14th amendments of laws involving disparities based on sex.

d. Establishment of a women's unit in the Office of Education to lead efforts to end discrimination in education because of sex.

e. Collection, tabulation, and publication of all economic and social data collected by the Federal government by sex as well as race.

f. Establishment of a high priority for training for household employment by the Secretary of Labor and the Secretary of Health, Education, and Welfare.

5. The President should appoint more women to positions of top responsibility in all branches of the Federal government, to achieve a more equitable ratio of men and women. Cabinet and agency heads should be directed to issue firm instructions that qualified women receive equal consideration in hiring and promotions.

Respectfully submitted.

VIRGINIA R. ALLAN,
Chairman.

Elizabeth Athanasakos, Ann R. Blackham, P. Dee Boersma, Evelyn Cunningham, Ann Ida Gannon, B.V.M., Vera Glaser, Dorothy Haener, Patricia Hutar, Katherine B. Massenburg, William C. Mercer, Alan Simpson, Evelyn E. Whitlow.

The President today announced the establishment of the Task Force on Women's Rights and Responsibilities, with Miss Virginia R. Allan, former President of the National Federation of Business & Professional Women's Clubs as the Chairman. The task force will review the present status of women in our society and recommend what might be done in the future to further advance their opportunities.

The members of the Task Force on Women's Rights and Responsibilities are:

Miss Virginia R. Allan, Executive Vice President, Cahalan Drug Stores, Inc., Wyandotte, Michigan.

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Hon. Elizabeth Athanasakos, Municipal Court Judge and Practicing Attorney, Fort Lauderdale, Florida.

Mrs. Ann R. Blackham, President, Ann R. Blackham & Company, Winchester, Massachusetts.

Miss P. Dee Boersma, Student Govt. Leader, Graduate Student, Ohio State University, Columbus, Ohio.

Miss Evelyn Cunningham, Director, Women's Unit, Office of the Governor, New York, New York.

Sister Ann Lda Cannon, B.V.M., President, Mundelein College, Chicago, Illinois.

Mrs. Vera Glaser, Correspondent, Knight Newspapers, Washington, D.C.

Miss Dorothy Haener, International Representative, Women's Department, UAW, Detroit, Michigan.

Mrs. Laddie F. Hutar, President, Public Affairs Service Associates, Inc., Chicago, Illinois.

Mrs. Katherine B. Massenburg, Chairman, Maryland Commission on the Status of Women, Baltimore, Maryland.

Mr. William C. Mercer, Vice President, Personnel Relations, American Telephone & Telegraph Co., New York, New York.

Dr. Alan Simpson, President, Vassar College, Poughkeepsie, New York.

Miss Evelyn E. Whitley, Attorney at Law, Los Angeles, California.

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Title IV and Title IX of the Civil Rights Act of 1964 should be amended to authorize the Attorney General to aid women and parents of minor girls in suits seeking equal access to public education, and to require the Office of Education to make a survey concerning the lack of equal educational opportunities for individuals by reason of sex

Discrimination in education is one of the most damaging injustices women suffer. It denies them equal education and equal employment opportunity, contributing to a second class self image.

There have been enough individual instances and limited surveys publicized recently to make it apparent that substantial discrimination does exist. For example, until forced to do so by legal action, the New York City Board of Education did not admit girls to Stuyvesant High School,[2] a specialized high school for science with a national reputation for excellence. Legal action recently has forced the State of Virginia to admit women to the University College of Arts and Sciences at Charlottesville.[3]

Higher admission standards for women than for men are widespread in undergraduate schools and are even more discriminatory in graduate and professional schools. For this reason counselors and parents frequently guide young women into the "feminine" occupations without regard to interests, aptitudes and qualifications.

Only 5.9 percent of our law students and 8.3 percent of our medical students are women,[4] although according to the Office of Education women tend to do better than men on tests for admission to law and medical school.

Section 402 of Title IV, passed in 1964, required the Commissioner of Education to conduct a survey of the extent of discrimination because of race, religion, color, or national origin. Title IV should be amended to require a similar survey of discriminations because of sex, not only in practices with respect to students but also in employment of faculty and administration members.

* * * * *

Section 407 of Title IV authorizes the Attorney General to bring suits in behalf of persons denied equal protection of the laws by public school officials. It grants no new rights. While no case relating to sex discrimination in public education has yet reached the Supreme Court, discrimination based on sex in public education should be prohibited by the 14th amendment. The President's Commission on the Status of Women took this position in its 1963 report to the President.[5] Section 902 of the Civil Rights Act authorizes the Attorney General to intervene in cases of this kind after a suit is brought by private parties. Both section 407 and section 902 should be amended to add sex, and section 410 should be similarly amended.

Title II of the Civil Rights Act should be amended to prohibit discrimination because of sex in public accommodations

Title II of the Civil Rights Act of 1964 provides that "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

Injunctive relief is provided for persons whose rights are violated, and the Attorney General is authorized to initiate suits in patterns or practice cases and to intervene in suits filed by individuals.

Discrimination because of sex is practiced primarily in restaurants and bars. While the Task Force does not consider this the most injurious discrimination against women today, it is wrong in principle.

The State of Pennsylvania and the City of Pittsburgh have amended their human rights legislation to prohibit discrimination because of sex in public accommodations.

The Task Force recommends amendment of sections 201(a) and 202 by adding "sex," between "religion" and "or."

By Mr. GRIFFIN:

S. 2553. A bill to provide for the restriction of the distribution of phosphate detergents in interstate commerce and the establishment of standards protecting man and the environment for all detergents. Referred to the Committee on Commerce.

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[2] *De Pivera* v. *Fliedner*, Sup. Ct. N.Y. Civil Action, 00938–69. Resolved by administrative appeal.

[3] *Kirstein et al* v. *University of Virginia*, E. C. Va. Civil Action No. 22069–R.

[4] Executive Secretary, Association of American Law Schools, 1968. Association of American Medical Colleges, 1967.

[5] President's Commission on the Status of Women, *American Women*, p. 45, 1963.

PHOSPHATE CONTROL LEGISLATION

Mr. GRIFFIN. Mr. President, I am introducing today a bill which would reduce and limit the phosphorous content in detergents without in any way endangering public health.

The bill would prohibit manufacture, distribution, or sale of any detergent containing more than 8.7 percent elemental phosphorus.

The 8.7-percent requirement is in the lower range of phosphorous concentrations in today's laundry detergents. Although this phosphate standard is 30- to 40-percent lower than concentrations in most high-phosphate detergents on the market, it would still be possible, utilizing developed technology, to produce detergents with effective cleaning power for most uses.

The bill would also authorize the Environmental Protection Agency to establish environmental and public health standards for all detergent constituents including phosphate substitutes.

Industrial detergents would be regulated by the legislation. The impact on industry should not be great since many industries are already using nonphosphate formulations in their detergents.

Even though Government experts currently opt for phosphates over substitutes which have been found to be harmful to humans, I believe it still makes sense to require a reduction of the phosphorous content in detergents and to establish a uniform standard of Federal regulation.

This legislation is consistent with a joint statement issued recently by the Council on Environmental Quality, the Environmental Protection Agency, and the Department of Health, Education, and Welfare.

Substantial research has identified detergent phosphates as a key factor in the accelerated pollution of many lakes and rivers. Phosphates cause excessive growth of plant life—eutrophication. It has been estimated that phosphates, in combination with other nutrients, have aged Lake Erie 15,000 years in the last 50 years.

Besides making waters undesirable for esthetic and recreational purposes, the heavy growth of plantlife reduces the oxygen supply necessary for many kinds of fish. Several popular game fish, such as blue pike, whitefish, and blue walleye are now extinct in Lakes Erie and Ontario.

Many nutrients are necessary for the growth of algae, but in most instances phosphorus is the critical nutrient. It can be controlled by man, since most of the phosphorus entering our lakes and rivers comes from human sources. In its 1970 report to the Congress, the Council on Environmental Quality indicated that—

> Phosphates are still the most important nutrient to control if eutrophication is to be successfully attacked.

While phosphorus comes from several sources, including agricultural runoff, human wastes and detergents, approximately 50 percent of the phosphorus, which is soluble and can support algae growth, comes from detergents. Thus, a reduction of phosphorus in detergents can be a significant, and hopefully an elimination, step in arresting the rate of eutrophication.

The Council on Environmental Quality in its 1970 report called for a major attack on eutrophication. The Council said:

> Three actions are necessary: One, phase phosphates out of detergents as soon as feasible; two, find better methods to control agricultural runoff; and three, remove more of the nutrients from wastes generated by towns and cities, particularly in urban centers and in critical areas such as the Great Lakes.

In addition, both the United States-Canadian International Joint Commission and the House Government Operations Committee have recommended the reduction or replacement of phosphorus in detergents.

The IJC, in its report on pollution of Lakes Erie and Ontario, states:

> The Commission is convinced that the reduction of phosphorus input into Lake Erie, Lake Ontario and the International Section of the St. Lawrence River will significantly delay further eutrophication and will allow the recovery of the Lakes to begin through natural processes.

One of the key recommendations of the IJC was the complete elimination of all phosphorus in detergents by December 31, 1972.

Some will argue that reduction or replacement of detergent phosphates, while helpful to some bodies of water, will not materially retard eutrophication in other waters such as coastal areas. This may be true, but it does not follow that we should do nothing to control phosphate detergents in the areas where regulation would alleviate serious pollution problems. My bill resolves this conflict by allowing the EPA Administrator to permit use of high-phosphate detergents in those areas of the country where such use would not lead to harmful eutrophication.

In this regard, I certainly agree with the 1970 report of the House Government Operations Committee which states:

> No one, so far as we know, claims that phosphorus is the only nutrient necessary to form algae, or even that phosphorus is in every case the limiting nutrient. But if, as the evidence shows, phosphorus is the limiting nutrient for algae growth in the Great Lakes—the largest body of fresh water on the planet—then the role of phosphorus in eutrophication is intolerable, even if it does not affect a single other lake anywhere.

Reducing or even eliminating phosphorus in detergents, of course, is not the final answer to the problem of water eutrophication. Effective treatment of municipal wastes is also needed to remove phosphorus from other sources. But treatment facilities to accomplish this purpose are costly and will not be in operation for years in many communities.

Even in Detroit and other cities where agreements have been reached between the city and the Federal Government to build treatment plants removing 90 percent of phosphorus, it will be 5 years or longer before such facilities are constructed.

A reduction of phosphorus in detergents can be accomplished much more quickly. In addition, as the IJC report pointed out, removal of phosphorus from detergents could considerably reduce the cost of removing phosphorus at the sewage treatment plants.

Despite the important environmental reasons for restricting the use of phosphate detergents, we must satisfactorily resolve all public health and safety questions affecting the use of any substitute for phosphates. Problems have arisen with nonphosphate detergents due to the highly caustic nature of some of these products.

The Surgeon General of the United States, before the House Public Works Committee, pointed out that certain nonphosphate detergents contain caustic substances which "can pose serious accident hazards, especially to children."

The Surgeon General also noted, however, that "not all nonphosphorous detergents are hazardous or costly."

Furthermore, nitrilotriacetic acid, commonly referred to as NTA and widely hailed as a substitute for phosphates, was voluntarily withdrawn from the market last year at the request of the Surgeon General. This action was based on a report by the National Institute of Environmental Health Science indicating that NTA, in combination with other heavy metals such as cadmium and mercury, might increase the likelihood of birth defects. The recent report by the Council on Environmental Quality, the Environmental Protection Agency, and the Department of Health, Education, and Welfare appears to rule out the use of NTA as a suitable substitute for the foreseeable future.

My legislation would require that every proposed substitute for phosphates, such as NTA, be thoroughly tested for possible hazards to human health.

Mr. President, the principal feature of the bill I am introducing today is that it would prohibit the manufacture or sale of any detergent after June 30, 1972, which contains more than 8.7 percent phosphorus. This standard is consistent with a number of State laws and local ordinances which have already been passed.

However, my bill would not legislate a ban or set a deadline for elimination of all phosphates in detergents. Such deadlines have been set in many State and local laws.

In addition, the Administrator would be authorized to further reduce or to ban the use of phosphates in detergents as and when a safe substitute is developed.

To assure that the environmental and public health aspects of any substitute are thoroughly analyzed and tested, the EPA Administrator would be directed to establish standards for all detergents.

The Administrator would be required to consult with the Secretary of the Department of Health, Education, and Welfare in establishing public health standards for detergents. The Secretary of Health, Education and Welfare also could propose public health standards to be considered by the Administrator.

Recognizing that highly effective cleaning detergents may be critically needed in places such as hospitals or food processing plants, the bill would authorize the Administrator to make exceptions, if necessary, from the requirements limiting the use of phosphates in detergents.

As I mentioned earlier, exceptions could also be allowed for the use of high phosphate detergents in areas where no significant pollution threat would be posed.

Finally, in order to assure that detergent manufacturers are not subjected to a multitude of conflicting State and local restrictions on the use of phosphate detergents, the bill provides for Federal preemption of incompatible State or local laws.

Mr. President, I believe that this legislation offers a rational and reasonable approach to the phosphate pollution problem. We owe it to ourselves as well as future generations to make every effort to reverse the tide of pollution pouring into our lakes and rivers.

Mr. President, I ask that the text of the bill, S. 2553, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2553

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Detergent Control Act".

DEFINITIONS

SEC. 2. For the purposes of this Act the term—

(1) "detergent" means a cleaning compound composed of inorganic and organic components, including surface active agents, soaps, water softening agents, builders, dispersing agents, corrosion inhibitors, foaming agents, buffering agents, brighteners, fabric softeners, dyes, perfumes, enzymes, or fillers, which is available for household, personal, laundry, industrial or other uses in liquid, bar, spray, tablet, flake, powder, or other form;

(2) "polyphosphate builder" or "phosphorus" means a detergent ingredient used principally as a water softening and soil-suspending agent made from condensed phosphates including the pyrophosphates, the triphosphates (frequently called tripolyphosphates) and the glossy phosphates or metaphosphates;

(3) "environmental and public health standard" means standards designed to retard cultural euthophication and protect against any injury to man and any animals living in the water including fish and shellfish; and

(4) "Administrator" means the Administrator of the Environmental Protection Agency.

DETERGENT STANDARDS

SEC. 3. (a) The Administrator shall establish such rules and regulations as are necessary to prevent the manufacture, transportation, distribution, or sale in interstate commerce after June 30, 1972, of any detergent containing in excess of 8.7 percent phosphorus expressed as elemental phosphorus or which requires a recommended use level of detergent which contains more than 7 grams of phosphorus expressed as elemental phosphorus.

(b) The Administrator may, by regulation, further restrict or prohibit the use of phosphorus or polyphosphate builders in detergents if he finds that a substitute is generally available which meets the standards established pursuant to subsection (c) of this section.

(c) The Administrator, after consultation with the Secretary of Health, Education and Welfare with regard to public health effects of detergents, or any detergent, or any detergent ingredient, shall as soon as practicable, establish environmental and public health standards for all detergents or ingredients thereof.

(d) The Administrator may by regulation exempt detergents from the requirements of this section on the basis of certain uses, such as for medical or scientific purposes, or on the basis of geographic distribution, if (1) he finds it necessary to protect the public health and safety, or (2) he finds that there is not a significant threat of pollution to surface or ground waters.

(e) The Administrator shall establish such rules and regulations as are necessary to prevent the manufacture, transportation, distribution, or sale in interstate commerce of detergents not meeting any restriction, prohibition, or standard established under subsections (b) or (c) of this section. Such rules and regulations shall take effect ninety days after they are promulgated notwithstanding the provisions of subsection (a) of this section.

(f) The Administrator and the Secretary of the Treasury shall jointly promulgate rules and regulations that prohibit the importation of any detergent which fails to meet any restriction, standard or prohibition established herein.

MODIFICATION OR RECISSION

SEC. 4. Any manufacturer, distributor or supplier of a detergent or detergent ingredient affected by standards or regulations issued pursuant to section 2 may petition the Administrator for modification or recission of any standard or regulation. The Administrator may at any time modify or rescind such standard or regulation.

ENFORCEMENT

SEC. 5. (a) (1) Any person who violates any rule or regulation promulgated under this Act shall be liable to a civil penalty of not more than $25,000 for each day of such violation.

(2) The Administrator may assess, collect, and compromise any civil penalty incurred under this Act. In determining the amount of such penalty, or the amount agreed upon in compromise, the Administrator shall consider the gravity of the violation including any good faith efforts to comply with any rule or regulation promulgated under this Act. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(3) Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) The Attorney General or his delegate at the request of the Administrator may bring an action in the appropriate district court of the United States to enjoin any act which violates or appears to violate any rule or regulation promulgated under this Act and the district courts of the United States shall have jurisdiction to restrain such violations. Any violation of an injunction or restraining order shall constitute a violation subject to the penalties of subsection (a) of this section.

(c) (1) Except as provided in paragrapn (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any rule or regulation established under this Act. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such rule or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to thirty days after notice of the violation has been given to the Administrator, and to any alleged violator of the rule or regulation; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the rule or regulation; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator).

REPORT TO CONGRESS

SEC. 6. On or before July 1, 1972, the Administrator shall (1) report to the Congress on measures taken toward the resolution of the detergent problem, including the development and manufacture of new types of detergents and new or improved sewage treatment processes which affect this problem; and (2) make recommendations for additional legislation, if necessary to regulate the composition of detergents in order to abate and control pollution arising from their manufacture, sale, and use.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. There is hereby authorized to be appropriated such sums as may be necessary for the purposes and administration of this Act.

FEDERAL PREEMPTION

SEC. 8. (a) It is hereby declared that it is the express intent of Congress to preempt and supersede any and all laws of the States or political subdivisions thereof relating to restrictions on or prohibiting the use of, or standards with respect to the composition of, detergents which are not compatible with any restriction, prohibition or standard of this Act.

(b) Nothing in this Act shall be construed to prevent any State from enforcing any standards, restrictions, or prohibitions pursuant to this Act.

EFFECT ON OTHER ACTS

SEC. 9. This Act shall not be construed as superseding or limiting the authority and responsibilities of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act.

By Mr. WEICKER (for himself, Mr. AIKEN, Mr. BAKER, Mr. BAYH, Mr. BEALL, Mr. BENNETT, Mr. CANNON, Mr. COOPER, Mr. DOLE, Mr. DOMINICK, Mr. HUMPHREY, Mr. JACKSON, Mr. JAVITS, Mr. JORDAN of Idaho, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGEE, Mr. MOSS, Mr. MUSKIE, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. ROTH, Mr. SCHWEIKER, Mr. SCOTT, Mr. STEVENS, Mr. TAFT, and Mr. TUNNEY):

S.J. Res. 158. Joint resolution to declare May 6, 1972, "Clean Up America Day" and to urge the participation of

all Americans. Referred to the Committee on the Judiciary.

Mr. WEICKER. Mr. President, with 28 other Senators I am introducing today a joint resolution that would authorize and request the President to declare May 6, 1972, "Clean Up America Day."

All of us in the Congress have, at one time or another, spoken out on the critical environmental problems facing the country. We know that the preservation and protection of our environment is a top priority for the American people and the people of the world.

The concern of the American people to clean up our land, to restore its original beauty, clearly exists. But we must now foster that concern into constructive action. By proclaiming May 6, 1972, as "Clean Up America Day" my colleagues and I are not asking for speeches or massive expressions of concern. We are calling for action. We are calling for millions of people across this land to undertake useful projects to enhance their physical surroundings.

On "Clean Up America Day" we call upon every State and local government to mobilize work projects to clean our city streets and parks, our highways and waterways. We also call upon corporations, governmental agencies at all levels, schools, colleges, and universities to lend manpower, equipment, and money to communities across the country as a constructive contribution toward the goal of a cleaner America.

All of us own a precious share in this country. The preservation of our future will not be insured unless we make an investment now to protect what we have inherited from the past. To participate and to contribute is a basic credo of our Nation. To engage in a helpful project on "Clean Up America Day" would be to transform our past words into constructive action.

Earth Day, April 22, 1970, was a massive expression of concern for the environment; "Clean Up American Day" should be an active, working symbol of our united desire to save our natural resources and enhance the beauty of our Nation. Government alone cannot heal the damages already incurred. But a cooperation between Government, private industry, the academic community, and the American people can. To confront reality and join forces against those who waste and litter our lands and waters is a long road to travel. "Clean Up America Day," bringing together the efforts of millions and millions of Americans, would be a fitting start on that journey.

I encourage the Congress to further our commitment for a cleaner America by promptly enacting this legislation.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1081

At the request of Mr. BAYH, the Senator from Maine (Mr. MUSKIE) was added as a cosponsor to S. 1081, a bill to extend benefits under section 8191 of title 5, United States Code, to law enforcement officers and firemen not employed by the United States who are killed or totally disabled in the line of duty.

S. 2135

At the request of Mr. NELSON, the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of S. 2135, to amend title V of the Social Security Act by extending for 5 years the period within which certain project grants may be made.

S. 1734

At the request of Mr. METCALF, the Senator from Michigan (Mr. HART) was added as a cosponsor of S. 1734, the Forest Lands Restoration and Protection Act of 1971.

S. 2185

At the request of Mr. BAYH, the Senator from Maine (Mr. MUSKIE) was added as a cosponsor to S. 2185, a bill to carry out the recommendations of the Presidential Task Force on Women's Rights and Responsibilities.

S. 2373

At the request of Mr. HRUSKA, the Senator from Maryland (Mr. MATHIAS) and the Senator from Oregon (Mr. HATFIELD) were added as cosponsors of S. 2373, to authorize the merger of two or more professional basketball leagues, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. BROCK, the Senator from Arizona (Mr. FANNIN) and the Senator from Wyoming (Mr. HANSEN) were added as cosponsors of Senate Joint Resolution 112, proposing an amendment to the Constitution of the United States relating to open admissions to public schools.

SENATE JOINT RESOLUTION 150

At the request of Mr. BAYH, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor to Senate Joint Resolution 150, a resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

NOTICE OF HEARINGS ON CERTAIN BILLS

Mr. ALLEN. Mr. President, I wish to announce that the Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture and Forestry has scheduled hearings November 15, 16, 22, and 23 on the following farm bargaining bills: S. 726, S. 727, S. 1775, and S. 1972. The hearings will be in room 324, Old Senate Office Building, beginning at 10 a.m. each day. Anyone wishing to testify should contact the committee clerk as soon as possible.

NOTICE CONCERNING NOMINATION BEFORE THE COMMITTEE ON THE JUDICIARY

Mr. BYRD of West Virginia. Mr. President, the following nomination has been referred to and is now pending before the Committee on the Judiciary:

Herbert J. Stern, of New Jersey, to be U.S. attorney for the district of New Jersey for the term of 4 years, vice Frederick B. Lacey, resigned.

On behalf of the Committee on the Judiciary, and at the request of the distinguished chairman of that committee, Mr. EASTLAND, notice is hereby given to all persons interested in this nomination to file with the committee, in writing, on or before Monday, September 27, 1971, any representations or objections they may wish to present concerning the above nomination, with a further statement whether it is their intention to appear at any hearing which may be scheduled.

NOTICE OF HEARINGS BY SUBCOMTEE ON HANDICAPPED WORKERS

Mr. RANDOLPH. Mr. President, I should like to announce that the Subcommittee on Handicapped Workers will hold hearings on S. 2506, a bill to amend the Randolph-Sheppard Act, on Wednesday, September 22, and Friday, October 1. The hearings are scheduled to begin at 10 a.m. in Room 4230, New Senate Office Building. Further information can be obtained from the staff in room 503-annex, telephone extension 57672.

ANNOUNCEMENT OF HEARINGS—WINNERS OF THE CONTEST "WHAT SHOULD BE DONE NOW TO MAKE THE UNITED NATIONS A MORE EFFECTIVE FORCE FOR PEACE"

Mr. FULBRIGHT. Mr. President, I wish to announce that on Thursday, September 23, the Committee on Foreign Relations will hear four young winners of a contest held by the United Nations Association of New York on the topic "What should be done now to make the United Nations a more effective force for peace?"

I invite attention to this hearing because I believe it will be refreshing and interesting to hear what these young people will have to say about the United Nations. They range in age from 16 to 24, and come from high school, college—including West Point—and graduate school. I ask unanimous consent that there be printed in the RECORD at the conclusion of my remarks a list with their names, together with the correspondence leading up to their appearance before the committee which gives further details on this contest.

I hope the Committee on Foreign Relations will make the winners feel welcome. We have listened to a great many experts over the years but not very much to the youth of our Nation. It is time they were given a forum as well.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNITED NATIONS ASSOCIATION OF NEW YORK, N.Y.
New York, N.Y., June 4, 1971.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: We thank you for your letter of May 26th and the affirmation of our efforts.

We have informed four of our winners, whose ideas we consider worthy of recognition, that they should be prepared to appear before the Committee on Foreign Relations on the morning of September 23rd. We are now awaiting their response as to their availability. To simplify matters, we attach their names and brief background data. We would

like to point out that they, as well as the other contest participants, represent a broad cross section of American youth.

I will be leaving for Europe and the Middle East in a few days and hope to find your instructions for detailed arrangements upon my return later in the summer.

Sincerely,

(Mrs.) HELEN LANGE,
Cochairman, Contest Committee.

UNITED NATIONS ASSOCIATION OF NEW YORK, N.Y.

YOUTH CONTEST WINNERS

Patricia Anne Kluka, age 20, student at Alverno College, Milwaukee, Wisconsin, spending her junior year in New York City attending Marymount Manhattan College, majoring in history and sociology. Home: Kenosha, Wisconsin.

Philip R. Lindner, age 20, member of the United States Corps of Cadets (Class of 1973), U.S. Military Academy at West Point, majoring in history with special interest in international problems. Home: Dallas, Texas.

Charles E. Tandy, age 24. Studied at small Kentucky liberal arts college, now defunct. Graduate studies at the New School for Social Research in New York City. Presently employed by the Health Department of Kenton County, Kentucky. Home: Central City, Kentucky.

Paul Rosenberg, age 16, student at Horace Mann School, Riverdale, New York. Home: Jamaica, New York.

MAY 26, 1971.

Mrs. HELEN LANGE,
United Nations Association of New York, New York, N.Y.

DEAR MRS. LANGE: Thank you for your further letter of May 18, 1971, with respect to the youth contest on the United Nations. I am glad to learn that it has produced some provocative and interesting ideas and look forward to hearing the winners.

You mention "early fall", which begins September 23. How would a one morning hearing on September 22 or 23, 1971 fit into your planning? As you know, as of now the Congress plans to be in recess between August 6 and September 8 and the date will have to be reconfirmed after the recess.

The format would be simple. The four winner representatives could appear as a panel before the Committee, each one presenting a short oral statement, supported by longer written statements if desired, to be followed by a discussion with the Committee members.

This is about as precise as I can be at this time and I would appreciate having your comments.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

UNITED NATIONS ASSOCIATION
OF NEW YORK, N.Y.,
New York, N.Y., May 18, 1971.

Hon J. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: We refer to your letter of June 30th of last year and your kind agreement to have the winners of our youth contest on "What should be done now to make the United Nations a more effective force for peace?" appear before the Senate Foreign Relations Committee or one of its sub-committees.

We are enclosing a preliminary report to which we would like to add that the contest gave proof to our assumption that a large number of young Americans in all walks of life are in favor of the UN. Many ideas as expressed in the entries were imaginative and constructive and will be included in our future planning and projects.

We have received an internship from the United Nations for the first prize winner of college age to attend the Conference on Human Environment which will take place in Geneva this summer.

On May 3rd, the winners received their awards at a ceremony at the UN. We were honored by a deeply moving address by Secretary-General U Thant.

After careful study of the entries and personal interviews with the winners after their return from their study trips to Europe, we would like four of them to come to Washington in early fall. We would be grateful for your advice as to how you would like to arrange for their appearance. Final arrangements can be postponed until the end of August. However, a definite preliminary arrangement as to the mechanics and time element are necessary for our planning.

Most sincerely yours,

(Mrs.) HELEN LANGE,
Co-Chairman, Youth Contest Committee.

UNITED NATIONS ASSOCIATION OF
NEW YORK, N.Y.

(Preliminary Report on the Youth Contest on "What Should be Done Now to Make the United Nations a More Effective Force for Peace?")

The winners came from all walks of life; some of them will be greatly helped in the pursuit of their studies and careers by the fact that they won the contest. They ranged from a Westpoint cadet and private school student to a daughter of a low-income railroad employee who had just lost his job and to a girl whose parents could hardly speak English. In general, we observed a predominance of entries from children whose parents were members of minority groups.

The college student who received the first prize will go to Geneva and will attend the Conference on Human Environment conducted by the UN for which we received an internship. The winner of the first prize in the high school category will go to Cambridge, England. We received a part scholarship from the Institute of Foreign Studies for this study trip abroad.

The award ceremony at the United Nations was an inspiration to the contestants, their families and our guests, especially since the Secretary-General appeared very pleased and honored us all with a deeply moving address which will never be forgotten by those who had the privilege to share in this experience.

All twelve winners and their families attended the ceremony; some of the families enjoyed a full weekend in New York through the courtesy of the companies for which the fathers of the respective winners work. Much publicity will be given to the event in the house organs of the companies the winners' families are connected with.

We anticipate the appearance of some of the winners before the Senate Foreign Relations and the House Foreign Affairs Committees in the fall. We expect one of them to be Philip Lindner, the West Point cadet who came all out for total world disarmament.

As of today, it seems that we have stayed well within the budget. We received $1,900 from the Institute for International Order. The balance was contributed by UNA-NY members, the Pepsi Cola Co., and the Tishman Realty Corp. and an anonymous donor. Mr. Harry Hochman, Vice-President of Datatron, Inc. advised us on the brochure and secured for us the layout and printing at greatly reduced costs from IPA.

The Committee received untiring help from volunteers, some of whom had come to us through the Headlines seminars. The ceremony at the UN was made possible through the advice and cooperation of Mr. Narasimhan, Mrs. Suzanne Jenssen of the Visitors' Service, Mrs. Simone of the Secretary-General's office, Mrs. David Exley, Chief of the NGO Section, and Miss Shelly of the NGO Section. Mrs. Spiegler, admirably, made time to carry out the manifold tasks connected with the contest, simultaneously attending to all the other requirements of her office. We also want to thank Mr. Spiegler for his cooperation as committee member as well as behind the scene.

Mrs. Henehan was very successful in securing the cooperation of major radio and TV stations for the purpose of publicizing the contest. We also owe thanks to her for a follow-up radio program with four winners which so inspired the program director that we were asked to be back in the fall for an hourlong program. We received newspaper coverage of the award ceremony in the New York Post and through the Associated Press. In addition, the contest winners were mentioned on the national CBS newscast by Walter Cronkite. Miss Child of the national UNA Center helped us most professionally with the press coverage.

In the most complicated task of making the contest known to the widest possible circles, we were greatly aided by many organizations (neighborhood houses, libraries, Ys, the N.Y.C. Board of Education, parochial schools, etc., altogether 50 organizations and 90 colleges), which took care of the distribution and mailing. Also, Mr. Harry Van Arsdale, President of the New York Central Labor Council, arranged for 'ads' in many union papers.

The slate of judges distinguished itself through some very prestigious members of our community, as well as through the diversity of their social and professional background. Thus we feel satisfied that the choice of winners came about in an objective way, based solely on the merit of the ideas expresed in the papers.

We have tried to justify the trust given to us by the Board and Membership of UNA-NY, as well as by the financial patrons, and hope that the contest can be repeated next year in a large context.

MARK HENEHAN,
(Mrs.) HELEN LANGE,
Co-Chairmen, Contest Committee.

UNITED NATIONS ASSOCIATION
OF NEW YORK, N.Y.
New York, N.Y., May 4, 1971.

YOUTHS WIN U.N. PEACE PRIZES

Two lucky students were today awarded prizes for European travel and study for original 500-word papers on the topic "What should be done *now* to make the United Nations a more effective force for peace?" The awards were given at a ceremony and tea held this afternoon at the West Terrace of the United Nations in the presence of Secretary-General U Thant.

Entries in the contest, held this winter under the auspices of the United Nations Association of New York, N.Y., were judged by a panel of distinguished educators, writers, and political scientists. First prize winner of the college age category was Charles E. Tandy, age 24, of Central City, Kentucky, who attended the New School for Social Research, New York City. The first prize is a trip to Geneva, Switzerland, to attend sessions at the United Nations European headquarters and to participate in the work of the International Student Movement for the UN (ISMUN).

First prize high school winner was Paul Rosenberg, of Jamaica, New York, a student at Horace Mann School, New York City. Paul's award is an American Institute for Foreign Studies scholarship, consisting of four weeks of study at a European school of his choice, and two weeks of travel. He is 16 years of age.

In addition to the opportunity for travel and study, both winners will meet with members of the Senate Foreign Relations and House Foreign Affairs Committees in Washington, D.C.

In the college group, honorable mention was awarded to Miran P. Sarkissian of New York City; Patricia Anne Kluka of New York City; Philip R. Lindner of West Point, N.Y.;

Mallory Anne-Marie Forbes of Valparaiso, Indiana; and Dennis Spiegel of New Hyde Park, N.Y.

In the high school group, honorable mention was awarded to Luda Anikienko of Cleveland, Ohio; Jon Kopel of Rye, New York; Nancy Klein of University Heights, Ohio; Keith Milkove of Cleveland Heights, Ohio; and Roslyn Holliday of Jamaica, New York.

Judges of the contest were: Mr. Michael Cavitt, former Executive Director of the World Youth Assembly; Congresswoman Shirley Chisholm; Dr. Andrew W. Cordier, Dean, School of International Affairs, Columbia University, and former UN Under-Secretary General; Dr. Richard Gardner, Professor of Law and International Organization, Columbia Univ.; Mr. Martin King, UN Correspondent, Daily News; Mrs. Eve Curie Labousse; Mr. Jack Newfield, writer, The Village Voice; Mr. Nicholas Robinson, former President of CIRUNA (Council on International Relations and UN Affairs); Mr. Dore Schary; Mr. John Spears, Executive Director, CIRUNA; Dr. John G. Stoessinger, Acting Director, Political Affairs Division, Department of Political and Security Council Affairs, United Nations; Mr. Kwami Taha, Director, N.Y. Urban League Street Academy Program; Dr. Harold Taylor, former President, Sarah Lawrence College.

DECEMBER 21, 1970.

Mrs. HELEN LANGE,
United Nations Association of New York, New York, N.Y.

DEAR MRS. LANGE: Thank you for keeping me informed, by your letter of December 8, 1970, of the progress being made in the "Speak Out for Peace" contest sponsored by the United Nations Association of New York.

I wish you success and look forward to hearing the winners next year.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

UNITED NATIONS ASSOCIATION
OF NEW YORK, N.Y.,
New York, N.Y., December 8, 1970.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Foreign Relations Committee, United States Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: We refer to your letter of June 30, 1970 and want to thank you again for the great encouragement which we derived from your support.

We herewith enclose the brochure announcing our youth contest. The response from the community has been very enthusiastic. Many organizations, such as the New York City Public Library System, the Board of Education, the New York Central Labor Council, the Archdiocese of New York, YMCA, YWCA, YM/YWHA, American Friends Service Committee, are assisting us with a far-reaching distribution and publicity.

We will keep you informed of our progress and results.

Sincerely yours,

(Mrs.) HELEN LANGE,
MARK HENEHAN,
Co-Chairmen, Youth Contest Committee.

Now you have the opportunity to discuss with Senators, Congressmen and the UN Secretary-General how you feel about peace.

If you are between 16 and 25 years of age, express in 500 words or less your views on what should be done now to make the United Nations a more effective force for peace?

At 25 the UN is still young. You share its challenges and its concerns, its hopes and its frustrations. It is you who will have to build a future without war.

Prize winners in the high school and college age categories will have the rare opportunity to speak before the Senate Foreign Relations Committee, the House Foreign Affairs Committee, and to discuss their ideas with UN Secretary-General U Thant.

In addition, the First Prize winner of high school age will be awarded an American institute for Foreign Studies scholarship, consisting of four weeks of study at a European school of his choice and two weeks of travel. The First Prize winner of college age or over will be presented with a six-week trip to Geneva, Switzerland, to attend sessions at the UN's European headquarters and to participate in the work of ISMUN (International Student Movement for the UN).

The organization or school represented by each winner will receive $100. gift certificates from the World Affairs Book Shop. Five runners-up in each of the two categories will receive medallions commemorating the 25th Anniversary of the United Nations.

To enter, mail your paper before February 15, 1971 to: United Nations Association of New York, N.Y., 345 East 46th Street, New York, N.Y. 10017.

Indicate your name, address, age, affiliation (school or organization) if any, in the upper left-hand corner of your paper.

So hurry, start thinking, write down your ideas—then rewrite them until you are satisfied that you have spoken out clearly for peace.

All papers will be judged by a panel of leading citizens:

Mr. Michael Cavitt, Graduate student of international relations, New York University; formerly, Executive Director, U.S. Committee for the World Youth Assembly.

Rep. Shirley Chisolm, 12th District, New York.

Dr. Andrew Cordier, Dean, School for International Affairs, Columbia University; former Under-Secretary-General, United Nations.

Dr. Richard Gardner, Professor of Law & International Organization, Columbia University; former Deputy Assistant Secretary of State for International Organization Affairs.

Mr. Martin King, United Nations Correspondent, The Daily News.

Mrs. Eve Curie Labouisse, Writer and Lecturer.

Mr. Jack Newfield, Author and Editor, The Village Voice.

Mr. Nicholas Robinson, Attorney; former President of CIRUNA (Council for International Relations and UN Affairs, the collegiate affiliate of UNA).

Mr. Dore Schary, Director, Producer, Playwright; Commissioner of Cultural Affairs for the City of New York.

Mr. John Spears, Executive Director, CIRUNA.

Dr. John G. Stoessinger, Acting Director, Political Affairs Division, Department of Political & Security Council Affairs, United Nations; Professor of Political Science, the City University of N.Y.

Mr. Kwami Taha, Director, N.Y. Urban League, Street Academy Program.

Dr. Harold Taylor, Educator and Author, former President, Sarah Lawrence College.

JUNE 30, 1970.

Mrs. HELEN LANGE,
United Nations Association of New York, New York, N.Y.

DEAR MRS. LANGE: Thank you for your letter of June 1, 1970, concerning the contest "Speak Out for Peace" proposed for young adults on the occasion of the United Nations' 25th anniversary. I agree that this is a worthwhile endeavor and am particularly intrigued by the idea that an appearance before the Senate Foreign Relations Committee should be considered in the nature of a "prize" for the contest winners.

I am sure that the Committee, or its Subcommittee on Arms Control, International Law and Organization, will be glad to hear what the young people have to say. An appropriate time can be worked out after the contest has ended.

Sincerely yours,

J. W. FULBRIGHT,
Chairman.

UNITED NATIONS ASSOCIATION
OF NEW YORK, N.Y.,
New York, N.Y., June 1, 1970.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee, United States Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: We are turning to you to enlist your help and cooperation to insure the success of a dynamic project sponsored by the UNA-New York's 25th Anniversary Committee under the Honorary Chairmanship of Mayor John Lindsay, and the Co-Chairmenship of Mrs. Charles W. Yost and Mr. Whitney Young, Jr.

Called "Speak Out For Peace", the contest will afford young adults in the 16–25 age group, living or studying in the New York Metropolitan area, the opportunity to provide answers in 500 words or less, to the question: "What should be done now to make the United Nations a more effective force for peace?"

A distinguished panel of judges, composed of prominent educators, political scientists, concerned citizens, and spokesmen for youth, will select the winners. Deadline for entries has been set for December 31, 1970. Tentatively, several valuable prizes will be offered including opportunities to study and travel abroad.

However, young people today want something more than just personal gain. They want to be *heard* by members of the established order. We feel strongly that the major prizes must have relevance in an age that demands it. Therefore, we are in touch with Ambassador Yost, who has already favorably responded to this project, to discuss with Secretary-General U Thant the possibility of one of the top winners to present his paper to an appropriate body of the United Nations.

It seems to us of equal importance to afford one of the winners the opportunity to "speak out" before the Senate Foreign Relations Committee. It would focus the attention of the anti-war advocates on the UN as the best means of attaining their objectives. The World Organization itself might benefit by the infusion of new ideas into its deliberations, as well as provide strong favorable public opinion impact. Moreover, it would impress on American youth the realization that the authority of the UN is only as strong as the willingness of nation states to use the international organization as an effective instrument in foreign relations.

May we ask for your cooperation? We do not want this to be just another "essay contest". We have informed Senator Javits, who is an active member of our organization as well as being a member of the 25th Anniversary Committee, of this appeal to you. We expect that Senator Javits will contact you in our behalf.

Please give us your support.

Sincerely yours,

(Mrs.) HELEN LANGE,
Co-Chairman, Contest Committee.

UNITED NATIONS ASSOCIATION OF NEW YORK, N.Y.—YOUTH SPEAKS OUT

(Proposed contest to engage youth in an effort to make the United Nations a more effective instrument of peace—A Challenge to Tomorrow's Leader.)

The 25th Anniversary Committee of the UNA–NY announced a unique contest designed to tap and use the constructive ideas of young adults of ages 16 to 25 residing or studying in the New York Metropolitan area.

Tomorrow's leaders are invited to answer in 500 words or less the question: "What Should be Done *now* to Make the United Nations a More Effective Force For Peace?"

A distinguished panel of judges composed of prominent educators, political scientists and spokesmen for youth, will select the winners.

Entries will be evaluated according to the creativity and constructive nature of the

ideas expressed. Deadline for entries has been set for December 31, 1970.

Tentatively, several valuable prizes will be offered including an internship with a local governmental body, and opportunities to travel or study abroad.

It is hoped to provide the winners to "speak out" before an appropriate body of the United Nations, the Senate Foreign Relations Committee, and the major media.

The contest will be publicized through high schools and colleges, youth and community groups, labor unions, and settlement houses.

The primary purpose of the contest is to channel the energies and concerns of youth into the realization that the United Nations is the best means of obtaining their peace objectives.

UNA–NY COMMITTEE FOR THE 25TH ANNIVERSARY OF THE UNITED NATIONS—(INFORMATION)

The Honorable John V. Lindsay, Honorary Chairman.
Mrs. Charles W. Yost, Mr. Whitney Young, Jr., Co-Chairmen.
Mr. Roger Baldwin.
Dr. Leona Baumgartner.
Mr. Leonard Bernstein.
Mr. Algernon D. Black.
Mrs. Charles G. Gambrell.
Miss Laura Z. Hobson.
Mrs. Stanley M. Isaacs.
The Honorable Jacob K. Javits.
Mr. and Mrs. Henry Labouisse.
Dr. Julius Mark.
Mr. Seth M. Milliken, Jr.
Mr. Robert Moses.
Mrs. Louis Mizer.
Mr. John B. Oakes.
Mrs. Laurance S. Rockefeller.
Mr. Harvey Russell.
Mr. Dore Schary.
Dr. Benjamin Spock.
Miss Dorothy Stickney.
Mrs. Donald Stralem.
Miss Anna Lord Strauss.
Mrs. Arthur Ochs Sulzberger.
Dr. Harold Taylor.
Mr. Cyrus Vance.

NOTICE OF HEARINGS BEFORE SENATE SELECT COMMITTEE ON SMALL BUSINESS

Mr. BIBLE. Mr. President, on behalf of the Select Committee on Small Business, I desire to give notice that public hearings have been scheduled for October 5, 6, and 7, 1971, at 10 a.m. each day, in room 318—caucus room—of the Old Senate Office Building, covering the general subject of Small Business Administration oversight.

SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS TO STUDY SINGLE 6-YEAR PRESIDENIAL TERM—NOTICE OF HEARINGS

Mr. BAYH. Mr. President, over the years the Subcommittee on Constitutional Amendments, which I serve as chairman, has studied many important aspects of our system of elective government. To give but a few examples, we have studied the problem of succession to the Presidency, considered lowering the voting age in all elections, changing the term of office of Congressmen, and eliminating the outmoded electoral college method of electing our President. The first two studies led to the formulation and passage of the joint resolutions which now are the 25th and 26th amendments to the Constitution.

Today I would like to announce that the subcommittee will be starting another in this continuing series of hearings in a few weeks. Later this fall, on October 28 and 29, we will be conducting hearings on the Presidential term. The focus will be on Senate Joint Resolutiton 77—which would limit any future President to a single, 6-year term of office—introduced in the last few Congresses by our esteemed majority leader, Senator MANSFIELD, on behalf of himself and the distinguished and able Senator from Vermont (Mr. AIKEN).

PREVIOUS EFFORTS TO LIMIT THE PRESIDENTIAL TERM

While I have not yet personally decided whether I support this proposed change, I have no doubt that this subject clearly merits a thorough and scholarly investigation. No single person is more important to the successful functioning of our Government and of our Nation than is the President. And it is only restating the obvious to say that the President's powers and capabilities can be greatly altered by the length of the term he serves, and by the number of terms for which he is eligible.

Since the time of the first Constitutional Convention, the issue of the proper term of office for the President has long been debated, both in Congress and out. At that first Convention the method of selecting the President and the term of office he should serve were both debated at great length—it finally took more than 60 ballots to come to an agreement.

Arguments for change soon were heard, however. Not long after the Constitution was put into effect, the first proposal to change the term from 4 to 6 years was introduced. Since then nearly 160 similar proposals have been offered; most but not all of these proposals coupled the 6-year term with a provision making the President ineligible to succeed himself.

Several Presidents have supported such a limitation on their term. For example, in each of his annual messages to Congress, President Andrew Jackson called for limiting the President to a single term—be it 4 or 6 years. Presidents Harrison and Buchanan also called for limiting the President to a single term, as did Presidents Hayes, Cleveland, and Taft. We should not forget that the Confederate States of America limited their President to a single 6-year term.

Despite this ongoing debate, it was not until after President Roosevelt was elected to a fourth term that there was real pressure for action. The result, of course, was the 22d amendment, which limited the President to two 4-year terms.

It has now been 21 years since the passage of that amendment. We have had the chance to study and reflect on the meaning of the changes that have been made. But even though five different Presidents have been in office while this amendment was effective, there has been almost no thoughtful study of the effects which a limitation on the President's term or a limitation on his reeligibility has on his ability to govern effectively. I feel that it is high time for us to study this matter seriously—not for any political ends but in order to determine what combination of term length and eligibility for reelection will bring to this country a President who is at one and the same time responsive to the feelings of all Americans without finding it necessary to bend and change to satisfy the short term interests of powerful or electorally significant groups at the expense of the Nation's future interest.

THE SINGLE TERM LIMIT

It is clear that there is a lot to be said for freeing the President from the pressures stemming from the demands of reelection campaigns by limiting him to a single term. The most basic argument can be called the statesmanship argument. As Senator AIKEN put it so eloquently on the floor early this spring:

> This amendment would allow a President to devote himself entirely to the problems of the Nation and would free him from the millstone of partisan politics. A single term would allow a President to wear at all times his "presidential hat" and forget for a while that he also owns a "politicians hat".

Senator AIKEN contends that it is an indisputable fact that no President can give his best to the Nation or maintain our prestige in the world as long as he is constantly being fired on by those whose principal purpose is to keep him from being reelected.

Several scholars have pointed out to me that, in their view, our Presidents too often feel that they have to act like politicians seeking immediate reelection, when they should instead be acting like statesmen, expounding our national interest to the world, without regard to the consequences a necessary course of action might have on the next election. The President often is faced with incredibly difficult decisions. Unfortunately, the decision which is best for the long-term interests of the Nation is often quite unpopular when first made. I agree with the proponents of this measure that we ought to do all that we can in this time of increasingly complex international relations to so structure the term of office that every President will be encouraged to make such judgments on the basis of what is best for his country. It makes sense to minimize the importance of the President's own personal political interest.

The second basic argument for a single term limitation stems from the demands of a reelection campaign. Specifically, beginning with the end of his second year in office a President is said to spend an increasing amount of his time on the mechanics and strategy of gaining reelection. We cannot afford to have our Chief Executive spending so much of his—and the country's—time on purely partisan matters. In addition, Congress and the public often view anything the President does in the second half of his term as suspiciously partisan and not really worthy of respect. As a result, important programs are dismissed as political ploys. If the President were barred from succeeding himself, people would be more likely to realize that he was not just acting for partisan reasons and treat his proposals accordingly.

A single term is not without its drawbacks, however. Making a President ineligible for reelection could be said to remove from the political equation one of our basic sources of democratic accountability—the desire of each elected official to be so responsive as to be able to win reelection.

Another objection is that a President would be a "lame duck" from the outset of his term and thus unable to exercise all the powers which past Presidents have had at their command. Clearly we must give this issue closer study, but I am by no means convinced that a President who was barred from serving a second term by the Constitution—and not by his own unpopularity—would be a lame duck. He would have all the powers of the President while in office. Even though he could not succeed himself, he would be likely to be a powerful influence on the course of later events as an ex-President, and as a leader of his party. General Eisenhower was the only President to serve such a "lame duck" term; I have seen no evidence that his capabilities and powers were diminished noticeably at the outset of the second term.

Another charge does trouble me somewhat. Several political theorists have pointed out that in times of great crisis, such as the period following a nuclear disaster, the people should be free to reelect the same President once again. A constitutional mandate totally forbidding reeligibility might well hamstring our country in a time of great division, forcing the voters to choose between two complete unknowns when they might well be better off by choosing a man of proven ability.

I hope these hearings will lead to a detailed study of all these problems. We just do not know enough about them now, in my view, to make a careful judgment.

SIX-YEAR TERM

Obviously, it is by no means necessary to tie together the ban on reeligibility and the 6-year term, but the two seem to complement each other nicely. At the same time as we are precluding a second term it might well be wise to extend the length of the basic term to give the President enough time to learn the job, choose an effective staff, propose legislation, prod the Congress into passing it, and actually help in its implementation by the relevant Government agencies. There seems to be a popular consensus that 4 years is really not enough time to do all this. Therefore the 6-year term has been suggested. However, I do hope that our witnesses will address themselves to the following questions: it is sometimes said that one of the main reasons that the 4-year term seems too short is that the second half of most terms is taken up by reelection efforts. If we eliminate the possibility of reelection, might this give a President enough extra time to accomplish any or most of his programs within 4 years? Would 2 extra years make any real difference?

Those who oppose lengthening the term again speak of the problem of accountability. We are used to accepting whoever wins the election for 4 years. Will we be equally happy to accept a President who barely squeaked by in the election for a full 6 years? I realize, of course, that every Member of this body is elected to a 6-year term. But there is only one President for the whole country and there are two Senators from each State. And each State's two Senators are not picked in the same election. Would a President elected only every 6 years be sufficiently responsive to shifting tides of public will?

CONCLUSION

Mr. President, I am grateful to Senators MANSFIELD and AIKEN for raising this issue. These hearings will concern the rights of every citizen of this country. Their outcome could have an important effect on the ability of our Government to respond to modern demands and needs. I hope that these hearings will provoke a spirited debate both in Washington and in the States.

Anyone interested in submitting a statement for these hearings should contact the subcommittee office, room 300, Old Senate Office Building, Washington, D.C. Letters should be sent to the attention of Mr. Peter W. Coogan.

Mr. President, I ask unanimous consent that Senate Joint Resolution 77 be reprinted in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 77

Joint resolution proposing an amendment to the Constitution of the United States relating to the term of office of President and Vice President of the United States

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The term of office of the President and the Vice President of the United States shall be six years. No person shall be eligible for election for more than one term as President or Vice President. A person who has been elected as Vice President for any term shall be eligible for election as President for a later term. A person who has been elected as Vice President for any term, and who during that term has succeeded to the office of President, shall be eligible for election as President for a later term.

"SEC. 2. This article shall take effect on the 1st day of February following its ratification, except that this article shall not affect the duration of the term of office of President and Vice President in which such day occurs.

"SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

ADDITIONAL STATEMENTS

MR. FRED WILLIAMS

Mr. SCOTT. Mr. President, a patriotic American, Fred Williams, of Philadelphia, was recently presented with the Americanism Media Award by the Catholic War Veterans of the United States of America. Mr. Williams is a fitting recipient of such an honor for his outstanding work to promote an understanding and treasuring of our American heritage, for his many lectures and tapes on Pearl Harbor and especially for his inspired and award-winning editorial, entitled "Requiem for the U.S.A."

Mr. Williams is the first broadcaster to be named recipient of this award and he states:

You can be assured that I will continue to champion the causes of Americanism. To consider anything less would be to abdicate the responsibility of a good American and a good broadcaster.

Working diligently to reinstall in our society those principles and ideals upon which our country was established, Mr. Williams has expressed the highest traditions of responsible broadcasting and has promoted an understanding and treasuring of our American heritage. He is certainly a credit to Pennsylvania.

HANDGUN TRAGEDY

Mr. BAYH. Mr. President, I was deeply moved by the testimony of a witness who appeared last week before the Subcommittee to Investigate Juvenile Delinquency during hearings on the problem of handguns and particularly those small caliber handguns, the "Saturday night specials."

Mrs. Lillian Potter of Providence, R. I., told the subcommittee of the tragedy that had befallen her and her family in December of last year, when the life of her husband, a leading obstetrician and gynecologist, was snuffed out by two young gun-wielding thugs in the parking lot of the hospital, where he was to perform an operation that morning.

Dr. Potter has devoted his entire professional career to public service; indeed, as many who knew him said, "he was a man who loved life."

Mr. President, tragedies of this sort are repeated day in and day out in these United States as tens of thousands of Americans are either killed or injured because of the easy availability of cheap handguns.

Mrs. Potter's statement needs no elaboration on my part. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

TESTIMONY OF LILLIAN K. POTTER

Mr. Chairman and members of the Senate Subcommittee on Juvenile Delinquency:

December 10th was an *ordinary* day. I had breakfast with my husband as I had done for the past 30 years. Now, with our children all grown, we enjoyed these moments together every morning.

As usual, he had to leave early. Dr. Charles Potter, well-known obstetrician and gynecologist was off to the Lying-In Hospital to perform his umteenth operation in this his 30th year of practice. Then he was to do his hospital rounds, see his patients in the office and perhaps usher another new life into the world. As he left, he called back to me: "Remember, 'Hon,' there's symphony tonight".

My husband was never allowed to perform that operation. As he left his car in the hospital parking lot, in broad daylight (it was 8:30 in the morning), his meaningful, dedicated life was cut short by a single blast

from a small, deadly handgun. "Oh my God, oh my God", he cried out in disbelief, and then he was no more. His life ended on the very doorstep of the hospital where he had ushered in so many new lives.

He did not hear the symphony that night. Our seats were empty, but the audience stood in tribute to his memory as the conductor dedicated a symphony to the memory of Dr. Charles Potter.

This *ordinary* day which started out like every other day, marked the end of a great, a generous, a gifted man whose life had been dedicated to the well-being and happiness of others.

The whole state was stunned—thousands of letters poured in—donations were contributed to causes he supported—a clinic was named after him—a memorial library was started. Dedications, resolutions and memorials came for days and weeks after.

But this *ordinary* day left my life meaningless and without hope—except that one hope of sparing other wives, other parents, other children, the ordeal to which we were so suddenly and cruelly subjected:

Hope embodied in the spontaneous petition urging more effective gun control which brought in 11,000 signatures in our little state alone. I have brought them here to show you.

Hope in the overwhelming responses from Texas to Alaska, responses to my letters to the editor asking readers to join me in an attempt to end this plague of death by handgun.

Hope that by my presence here, painful though it is, I might sway a crucial vote or two.

Hope that another life might be spared.

Like the mother whose only child has been killed at a dangerous crossing and who then calls together all the mothers in the neighborhood to organize for action to get a much-needed traffic light installed to save the children of others, I am determined to dedicate myself to gather together the many people who, because of their similar tragedy, or their concern for the general safety, want to see the traffic in handguns ended.

A sermon preached the Sunday after his death began as follows: "There is so much violence these days, much of it so brutal that we tend to get hardened to it and forget that it is always personal".

Yes, we *are* becoming hardened to the grizzly statistics of gun murders. Every day the newspapers report the mounting toll of man-made death. Try clipping, as I have, the accounts of our murders for just one week and see how many your local newspaper reports. But, numbers, percentages, statistics, all these are so impersonal.

To me and my children, the statistic is 100%. To every family that has suffered as I have, the statistic is 100%. It is 100% to the widow of the little shopkeeper, the orphaned children of policemen or the family of the bank teller.

We share the same anguish, the same loneliness. For us the world is suddenly empty and the future bleak.

We know that all men must someday die.

Yes, men die from a heart attack, a plane crash or some act of God such as lightning or a flood; but my husband and the 23,000 others who die from guns each year, are killed by a "caused catastrophe"—a man-made plague.

The senselessness, the waste of precious human life makes it all the more unbearable for all of us. We who are the ultimate victims of crime are the "forgotten people" in our society. We live with the painful loss of a husband, a father, a friend, a contributing member of society.

In Africa, there is a saying: "A man is not dead until he is forgotten." My husband will not soon be forgotten if, as a result of his death, other lives are saved by enactment of more effective handgun control.

What kind of a man was murdered on the morning of December 10th? A man who worked hard to establish a Fertility Clinic to help childless couples to have their own children. A man who for years was chairman of an adoption committee. A man who never missed his free clinic rounds be it Christmas, New Year's Day or Thanksgiving. A man who once walked four miles through heavy snowdrifts to deliver his patient when cars and cabs were stranded. A man who, for 30 years, served as Chairman of the Medical Advisory Board of Planned Parenthood, always giving freely and generously of his time and skill so that only babies who were wanted and loved would be brought into this world.

On a more personal level, I and our daughters had known that their father was quite special, that no matter how busy he might be or how weary from lack of sleep, he always had time for us. They were so proud to bring friends home to meet their Dad who could talk so knowledgably about art, music, theater, travel, books, stamps, tennis or sailing.

A week after he was killed, the emptiness was expressed so well by our youngest daughter when she asked me: "When I bring someone home now, Mom, how will they know what a wonderful man my Dad was?"

My own private world, once so filled with warmth and love, was shattered in one blind, unreasoning blast from a tiny instrument of instant death. The sun may shine, but the world within me remains in darkness.

When people tell me how much *they* miss him, I think to myself, "If he meant so much to *you*, how can anyone measure what he meant to *me*"!

People ask why did such a man have to die—and in such a way? An editorial replied to this question:

"We are all guilty, society is guilty. The irony is that Dr. Potter and his wife were advocating amelioration of many evils in current society.

"Yet society failed them.

"His last words as he lay dying were: 'Oh my God, oh my God'! It keeps ringing in our ears. *He was the victim, but the guilt is ours.* It is because we have been silent for too long. For too long we have rationalized and condoned the evil that men do, and so now he lies in an early grave".

The sanctity and quality of human life has always been of prime concern to me and to my husband. After the assassination of Robert Kennedy, we both worked hard to get tighter gun control legislation in our own state. I was deeply concerned *before* that dreadful day in December; now, *after* my unspeakable loss, I am more determined than ever to see that others do not suffer such tragic personal loss from handguns.

In my letter to newspapers published earlier this month, I pointed out that we have been made conscious of body counts by reports of deaths on the battlefield but have not been equally aroused by the body count on the home front. And, I called on those who have suffered in silence thus far to speak up and unite to work together to ban the deadly handgun.

I will let the writers of these letters speak of their agony and concern in their own words:

From San Francisco: "I recently lost a very loved young brother by a senseless act with a handgun. The sorrow of my family could never be expressed, but my feelings about handguns have been and will continue to be expressed until some action is taken by the legislators of our country to pass stricter laws".

From a Philadelphia high-school student: "I've never lost a member of my family to a bullet from a gun. Nonetheless, I am concerned. Had you heard of the murder of a teacher named Samson Freedman? He was a good teacher. So is my mother, and I am afraid of the dangers in such a profession".

May I add parenthetically that I, too, am a teacher.

From Oceanside, L.I.: "On July 18th, my brother was shot to death while walking his dog. His murderer was 14 years old. Guns are so easily available and can fall into the hands of a child. (14 years is not much different from the age of my orphaned niece who is 7 and her brother who is 10)."

From Chicago: A man of 81 writes that in this violent society, he considers himself a "lucky survivor". Funny if it were not so tragic. Surely the continuity of one's life should be more than a lucky accident.

Why am I imploring you to restrict the manufacture and sale of handguns? Guns do not kill. People kill people. But it is with the gun in hand that people kill. It is the *combination* of the two that is deadly. The gun, a weapon so small, so deadly, so irrevocable, so quickly triggered in momentary fear, jealously or passion, does not give a second chance to the victim or the would-be murderer.

A minister in Missouri wrote: "My cousin was killed in January 1970 in an attempted robbery by a frightened 16-year-old boy who had a handgun. My cousin left a widow and four children. The boy with the gun had no previous record. He is now serving a life sentence. His life, too, is ruined. It was all so senseless—this madness must be stopped".

Most gun murders are done on impulse or in anger, and many occur within the family and among friends.

An editor in North Dakota writes: "Harsh punishment is little deterrent to murder. Murder is usually committed in a moment of blind rage. Guns are deadly and accurate and so quick; they leave no time to think of punishment".

Why are we so concerned about keeping medicines and poisons locked away where our children can't get them? Why are we careful about leaving roller skates on the cellar stairs, about using our power tools or lawn mowers with greater concern for safety, but not nearly as often do we hear about keeping deadly guns locked away where they can't be used in a fit of rage or temper—or, get into the hands of a child and used to kill or maim.

As you, the Subcommittee on Juvenile Delinquency, are well aware, 40% of firearm fatalities involve children and adolescents—with 9% being under ten years of age.

Restrictions on handguns are not the whole solution to indiscriminate murder. There must be an improvement in our prisons, a reform of our courts; our cities must be made more livable.

But, the restriction of the manufacture and sale of this weapon of death is a desperately needed part of the total solution.

It is our heritage to value human life. It is our heritage to live without fear. Yet what happened to my husband, Dr. Charles Potter, last December 10th can unless something is done, happen to you, to me, to anyone, anytime, anywhere.

May I close with the very first of dozens of letters which were sent to our local newspaper. It sums up the feelings toward him and the reaction to his senseless murder.

The headline reads: "He was a man who loved life . . .

. . . The full impact of the degeneration of contemporary American society was brought to bear on me when the radio announced that Dr. Potter had been killed. It is a society in which the essentially anonymous murder of good men has become the accepted norm. How can any society long survive when a man like Dr. Charles Potter can be shot down so mindlessly?

I remember Dr. Potter from a night over two years ago when I stood in front of the Lying-In Hospital waiting for the birth of my second child. It was three a.m. when the door burst open behind me and he came out with a broad smile to shake my hand and announce that I had a son. *He was a man who loved life.*

For a society that is so filled with hate and ignorance, the words that Dr. Potter

moaned while laying on the pavement are appropriate: 'My God, oh my God' ".

BRITISH RESEARCH ON "THE PILL"

Mr. PACKWOOD. Mr. President, from time to time during the last year or so, we have been inundated with scare reports about the dangers surrounding use of the "pill." The distinguished Senator from Wisconsin (Mr. NELSON) conducted extensive hearings into possible direct or indirect hazards associated with various forms of oral contraceptives. Although these hearings were invaluable in forcing the Food and Drug Administration and pharmaceutical manufacturers to look more closely at the composition, safety, and total effects of contraceptives, the publicity that was generated had the simultaneous effect of frightening millions of American women into abandoning use of the "pill," too often with no replacement method of birth control.

The "pill" is our most effective and widely used contraceptive today. Nevertheless, we must continue to maintain vigilance in seeking evidence of any possible physical dangers associated with use of the "pill." I will support prolonged and intensive biomedical research on the oral contraceptive until we can say with absolute certainty that it has been proven safe.

Because of the importance of documenting the safety of the "pill," I was interested to read recently of research results in Britain indicating that not only are oral contraceptives and breast cancer not linked, as has frequently been suggested, but that oral contraceptives may in fact protect against benign breast disease. A report on this study appeared in the July issue of Perspectives. Because of the timeliness of this study and its interest to the millions of women now using the "pill," I ask unanimous consent that it be printed in the RECORD.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

BREAST CANCER AND ORAL CONTRACEPTIVES NOT LINKED, BRITISH STUDY FINDS

No evidence of an association between the use of oral contraceptives and increased risk of breast cancer has been found in a two-year epidemiological investigation of the problem, Dr. Martin P. Vessey, senior member of a British research team, reported at the American Cancer Society's Second National Conference on Breast Cancer in Los Angeles, May 17. Instead, he said that the preliminary data suggest that "the preparations tend to protect against the development of benign disease" (M. P. Vessey, R. Doll and P. M. Sutton, "An Investigation of the Possible Relationship between Oral Contraceptives and Benign and Malignant Breast Disease").

Dr. Vessey, who is lecturer in epidemiology at the Radcliffe Infirmary in Oxford, England, and whose previous research helped demonstrate the association between the pill and increased risk of thromboembolic disease, explained that the breast cancer investigation was based on the hypothesis that if oral contraceptives speed up the rate of growth of latent tumors, or hasten the change from a premalignant state to malignancy, an effect would be demonstrable sooner than if one attempted to establish the relationship de novo, since human carcinogens seldom produce a demonstrable effect until 10 or more years after first exposure.

METHODOLOGY

In a case control study (still in progress) at five London teaching hospitals, 220 never-married women aged 16 to 39—166 of them undergoing biopsy for breast lumps that subsequently proved benign, and 54 being treated for breast cancer—were interviewed by medical social workers experienced in research, Dr. Vessey reported, and the patients' obstetrical, menstrual, contraceptive, family and social histories were taken. For each patient with breast cancer, two control patients were selected from the same hospitals' populations, but these patients were under treatment for a variety of other medical or surgical conditions. For each patient with benign breast disease, one control patient was selected. All the controls were matched with the affected patients in regard to age, marital history and parity, and were interviewed in the same way as the patients with breast cancer. Since independence between the two control series was not demanded, the same control patient might be matched both with a patient with breast cancer and one with benign disease. Thus, 216 control subjects were interviewed, of whom 58 were matched with patients in both study areas. The pathology department of each hospital provided histological material.

Contraceptive history of each patient in the study group was taken as of the time the breast lump was first noted; the contraceptive history of each study patient's matching control was taken as of the same time.

RESULTS

The research team found that of the 166 women with benign breast disease 116, or 70 percent, had never used an oral contraceptive, compared with 100, or 60 percent, of their matched controls. Of the 54 women with breast cancer 40, or 74 percent, had never used an oral contraceptive, while 69, or 64 percent, of their matched controls had done so. Thus, the investigators note, "The use of the preparations was less frequent in both series of patients with breast disease than in the corresponding matched controls."

The study also examined the length of time the oral contraceptive had been used in the different diagnostic categories. "The most striking disparity," the investigators note, "is again that between the patients with benign breast disease and their matched controls, the former having used the preparations for little more than half as long on the average (13 months) as the later (22 months)." Another finding of significance, based on histological review of the tissue excised from patients with benign disease, is that there is "no suggestion that any particular type of lesion is associated, either positively or negatively, with the use of sterodial contraceptives."

The investigators conclude, "The preliminary findings in our study are reassuring. The number of patients is small but, even so, they provide some evidence that oral contraceptives may protect against benign breast disease. . . ."

The co-authors, Drs. Richard Doll and Peter M. Sutton are, respectively, professor of medicine at Radcliffe Infirmary and reader in morbid anatomy at University College Hospital Medical School in London.

SCHOOL BUSING IN THE SOUTH

Mr. TALMADGE. Mr. President, school busing has descended like a plague on many school systems in the South.

Children are being denied the opportunity to attend schools nearest their homes. They are being uprooted from their neighborhoods and herded about like cattle.

All this is taking place in the name of school desegregation. It is being done to satisfy the misguided idea of some court or bureaucrat that a near perfect mathematical racial balance in the schools must be attained.

This is contrary to commonsense. I fail to see how the education of children can best be served by putting them on buses and shipping them clear across cities or counties. The fact is, busing disrupts education. It creates confusion in the schools and, in effect, relegates teaching and learning to secondary importance, when it ought to be the first order of business.

Busing runs contrary to the law as enacted by Congress and signed by the President. In 1964, the Congress specifically prohibited the assignment of students and teachers to schools simply to overcome racial imbalance. In other words, Congress said race should not be made the basis for school attendance—which, in fact, the U.S. Supreme Court said in the Brown decision in 1954.

Yet, because of confusion and lack of direction in the Federal courts, from the Supreme Court on down, and the administration, from the President on down, that is exactly what we have in schools today. Students are being assigned to schools and bused all about just for one reason. That is on the basis of their race. It is supreme idiocy. Arbitrary busing must cease. Normalcy and education must be resorted to our schools.

Mr. President, there appeared in the September 14 education of the Augusta (Ga.) Chronicle and the Augusta Herald two very fine editorials on this issue that I bring to the attention of the Senate.

I ask unanimous consent that the editorials be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Augusta Chronicle, Sept. 14, 1971]

RIGHT VERSUS FOLLY

Some six thousand five hundred concerned citizens assembled Sunday at the Academy of Richmond County in one of the most significant gatherings of the year—a meeting to express their support of the fundamental American right of a people to operate their own school system.

The community leaders who organized the rally have performed a notable public service, and have earned the commendation of everyone who wants the best possible education for every child in Richmond County.

What we in Richmond County face is the menace of a monolithic bloc of theorists in Washington who are determined to impose on every community an impractical, tremendously expensive system of busing children from one neighborhood to another. The object—to equalize the ratio of children of one race with that of another race—will provide far worse, not better education. It will be enormously costly, grievously wasteful of time, tragically dangerous in exposing more students unnecessarily to traffic hazards, callously destructive of parental participation in activities that support their children's schools, and shamelessly productive of needless classroom problems.

This is a situation which must be resolved, in a manner which is both equitable and law-abiding. The persons who attended Sunday afternoon's meeting demonstrated that this is the goal they seek. The meeting was remarkable for its calmness and objectivity. No displays of over-emotional and wild-eyed lawlessness were evident in the audience—just a calm, determined recognition of a

problem which needs to be solved, and must be solved.

The solution must be equitable. We are sure the overwhelming majority of those in the rally who rightly oppose busing also support the principle of giving the children in every one of our schools the best possible education. They would favor equality in equipment, library resources, laboratory facilities and preparation of faculty. Nothing less will do.

But the county faces a possible solution which rejects so simple a thing as quality for all. Two educational experts in Rhode Island College are drawing up recommendations for the federal district court here which we hope will be reasonable. They could, however—judging by court orders in other parts of the country such as, for example, San Francisco and Pontiac, Mich.—be radical, extremist and contrary to the basic principle of public control of public schools.

Judge Alexander A. Lawrence of the federal court, even though of necessity working within the limits of a federal appeals court mandate (which in its insistence on following the Charlotte decision allows possibly more latitude than generally recognized) does not have to adopt the recommendations of the two Rhode Island professors. Nevertheless, their advice will be seriously considered by the court, and it is a responsibility which these two men have.

We trust that they study most carefully not merely the cold statistics of registration, residence and busing facilities, but the genuine human problems involved. We hope fervently that they ponder the destructive effects on our school system which could be brought about by any radical scheme which ignores people, and ignores basic democratic rights.

We do not believe that the lower federal courts, or their advisors such as the Rhode Island professors, will best serve the cause of justice and equity by following blindly the dictates of a Supreme Court dominated by political appointees who have promoted extremist sociological theories. Somewhere our American system has to stop and take a new look at democracy, and at the Constitution. Lower courts, in our opinion, need to start submitting realistic and equitable decisions, even though they must be appealed over and over to the highest court until that tribunal realizes how far from justice it strays in permitting busing to destroy education.

The Supreme Court's decision in this matter "interpreted" the Constitution in an area in which the Constitution not only was silent. but in which it left "all other" powers to the states. The Supreme Court's decisions have run counter to the statutes enacted by the people's representatives in Congress assembled.

Many things can serve to impress the Supreme Court with the grevious damage it has done to America. The campaigns by groups such as that which met here Sunday is one way. Court actions on a wholesale scale all over America is another.

In the final analysis, however, we need freedom from educational dictatorship spelled out in the Constitution itself. An amendment to the Constitution now awaits consideration by the Congress, which would forbid busing for the purpose of achieving racial balance. It is sponsored by Congressman Fletcher Thompson of Georgia, who was present at the Sunday meeting.

All legal means—no illegal or law defying ones—must be used to meet this crisis in education. The biggest stick of all, however, is a constitutional amendment, denying, once and for all, the right of a little handful of theorists in Washington to impose their dictatorial and ruthless rule on every school district in this country.

[From the Augusta Herald, Sept. 14, 1971]

THE VOICE OF PROTEST

Out of a gathering Sunday of some 6,500 parents and concerned citizens assembled at Richmond Academy has come an expression of will loud enough and concerted enough to penetrate the hearing of even the most obtuse sociological meddler or would-be educational dictator.

Richmond Countians on the whole want no part of forced busing to attain that ephemeral idea, a balanced racial mix.

They want no outside interference in the management of their schools, which they feel perfectly capable of directing through their duly elected school officials acting as the instruments of their will.

They want the Constitutionally-secured right to give the lives of their children the kind of direction that they, as parents, are required to give—free of the artificialities of social theorizers.

They have drawn a line marking a halt to the rapid draining away of the remaining rights of a supposedly free people, and have expressed their determination to use every legal and peaceable weapon within their grasp to reassert and secure those rights, beginning here and now.

If this is defiance, it is defiance in a chorus and concert that cannot be ignored or dismissed as a show of overheated emotionalism. There was little that was emotional or lawless or unreasoning about the audience which attended the Sunday rally at ARC. It was, rather, a calm and objective and altogether low-keyed response to what these parents and concerned citizens have recognized as an impending blow not only to the generation immediately involved, but to the future of education itself, to future generations, to the valued concept of the neighborhood school, to one of the first manifestations of a democracy—the right of a governed people to say how they will be governed.

Of immediate concern to them, of course, is what the likelihood of massive busing implies in sheer disruption—the enormous extra cost, the waste of valuable time, the extra and needless hazards to which thousands of children will be exposed, the creation of new classroom problems and tensions, the roughshod expulsion of parental participation in school activities and utter disregard of parental authority—all for the attainment of an end that does more to satisfy the pet ideas of the theorist than it does the actual needs of the intended beneficiaries.

We feel it is safe to say that few of the parents who attended the ARC rally, and carry the aforementioned concerns close to their heart, would deny the need for quality education across the board for all youngsters, regardless of race, creed or color. There would be few who would deny their espousal of such an ambition for all children.

But these same people en masse would be—in fact, have been—the first to express their deep resentment of procedures that would tamper with their schools, with their children's lives, even with the emotional make-up of some whose days, activities, school friendships and allegiances will be disjointed or destroyed by enforced, massive busing to attain an ephemeral end.

The protest of this 6,500, plus others who have maintained their silence for one reason or another, will be pressed by every legal and peaceful means. One such means will be support of a proposed Constitutional amendment which would set forth clearly, once and for all, a denial to any outside force of any power to usurp local school authority through any such device as busing. The protest, which must in justice be heard and harkened to, is intolerant in but one respect. It is intolerant of the kind of dictatorship that the protesters see descending upon their schools, their children, their familes and their daily lives.

PROTECTING OUR FUTURE AND OUR ENVIRONMENT

Mr. ALLOTT. Mr. President, during the recent adjournment of Congress, an article was published in the Denver Post, to which I would like to invite the attention of the Senate.

The August 18 article relates the voluntary efforts of the American Metals Climax Co. through its subsidiary Climax Molybdenum Co., of Colorado, in working with conservation orientated organizations to plan, and carry out, its Henderson project, a molybdenum mine not far from Denver.

This experience demonstrates that conservation organizations and miners can sit down and work together toward a common goal, the protection of our environment, while meeting our consumptive requirements.

This, I believe, is the manner in which reasoning men should approach the environmental crisis which all of us realize must be faced.

We, as I have said before, cannot bring the wheels of our industry to a screeching halt and give up our search for future raw materials. To do so may solve some environmental problems, but we likely would find the cost of products, which we now take for granted, rapidly rising because of the lack of a sufficient supply to meet our human needs. Ultimately, our whole society could have its roots withdrawn from the soil, and dying from a lack of means with which to satisfy even our most basic physical and social needs.

The Committee on Interior and Insular Affairs, of which I am the ranking minority member, through its Minerals, Mining, and Fuels Subcommittee, presided over by the Senator from Utah (Mr. Moss), recently held field hearings in Billings, Mont., and learned of the guidelines which have been voluntarily drawn and agreed upon by the Forest Service and a number of mining concerns, including American Metals Climax, Anaconda, and Johns-Manville, insofar as future exploration and mining activities in the Stillwater Mining Complex are concerned. That complex is located in the Custer and Gallatin National Forests in Montana.

I commend the mining companies, the conservation organizations, and the Forest Service for the enlightened approach they are helping to develop.

It may be that the Colorado conservation groups are being looked upon in a skeptical manner by other similar organizations in the Nation, as the Denver Post relates, but I suggest to those other organizations that if such cooperative undertakings can be developed with satisfactory results in their areas of the country it is the better way to proceed than the confrontations which have developed elsewhere. I take cognizance of the existence of points of disagreement in this undertaking. It would be unnatural if they did not exist, but the heartening thing is that minor disagreements have not been allowed to destroy the good that is being done. I wholeheartedly encourage such organizations and private enterprise throughout our

land to try this approach. Our Nation will be the better for it.

Mr. President, I ask unanimous consent to have printed in the RECORD, the text of a Christian Science Monitor article reporting on the Henderson project. It by the way, relates that the many mining company officials were initially skeptical about the value of trying to work with the conservation groups, just as the conservation groups were skeptical. Neither reaction is surprising but, as I said, both have apparently discovered their initial reactions to have been wrong.

Lastly, I ask unanimous consent to have printed in the RECORD an excerpt from the statement which was made at the Montana hearings by Mr. Giles Walker, the representative of Amax, detailing the philosophy of American Metals Climax and Mr. Ian McGregor, chairman of its board of directors as well as some of the recognition it has received because of its demonstrated concern for our environment.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

NEW HENDERSON MINE: MINING, ENVIRONMENT MOUNTAIN

(By Dick Prouty)

EMPIRE.—Can a herculean mining operation costing $250 million and taking eight years just to begin production be compatible with the Rocky Mountain environment?

For the Henderson Project of Climax Molybdenum Company the answer seems to be "yes."

The Henderson Project is a plan to mine molybdenum ore under 12,315 foot Red Mountain 8 miles west of here, about 50 miles west of Denver.

The ore body, with about 4½ to 5 pounds of molybdenum being extracted per ton of ore, is large enough to last 30 or more years, Climax officials say.

FIFTY MILLION POUNDS

Annual production is to be 50 million pounds of molybdenum.

The second of three Henderson shafts now is being put down 3,100 feet into the same mountain from which Climax' Urad Mine is extracting ore. Later a third shaft will be sunk.

To get the ore to the mill, 14.6 miles away, a 10-mile-long tunnel is being bored between the mine, under the Continental Divide to the upper reaches of the Williams Fork River.

Harold Wright, Henderson mine manager, said that when full production gets under way—target date is 1975—six completely automated electric trains with 30 cars each will be shuttling back and forth between mine and mill.

"They're completely automated, there's no one in them at all," Wright said of the trains, which are a low-profile narrow-guage type.

Each train will have four, 50-ton rated locomotives of the Swedish ASEA manufacture, he said.

At the mill, where a mountain is being leveled for the site of a crusher and mill, two tailings ponds and a water reservoir also are under construction.

According to Bill Reno, Climax construction engineer, the tailings ponds will require about 130 acres of the 18,000 acres of land Climax has bought in the Williams Fork drainage.

The project isn't just Climax. It's also the product of the Thorne Ecological Foundation, Boulder, the Denver-based Rocky Mountain Center on Environment (ROMCOE), the U.S. Forest Service, Colorado Water Pollution Control Commission, the Colorado Open Space Council and others.

PAYING THE BILL

But it is Climax, a subsidiary of American Metals Climax, New York City, that's paying the bill. The environmental safeguards were undertaken with "a great deal of apprehension on both sides on how it would work out," said Jim Gilliland, a Colorado native who is director of environmental controls for Climax.

How much the environmental considerations will cost hasn't been calculated. But it's plenty, a company official said.

The first environmental controls were extensions of conservation measures worked out betwen the U.S. Forest Service and Climax in the early 1960s when the Urad mine was reopened.

The Colorado Water Pollution Control Commission didn't even exist then, but the Climax representative, the late Ernie Jones, pioneered the ecological outlook with Neil Edstrom, former Idaho Springs forest ranger.

LODE DISCOVERED

The Henderson lode was discovered in the mid 1960s. The scope of mining more than 300 million tons of ore, of having water for milling, tailing ponds for nearly 1,900 pounds of mill waste per ton, power lines, roads, housing for workers and other impacts on the environment generated studies on the ecological significance of the development.

Stan Dempsey, Climax attorney, was active in conservation work and as plans for Henderson were outlined he sought a broader input on environmental aspects from the fledgling Colorado Open Space Council.

Climax officials including Dempsey, Don Stephens and Bill Distler, then Henderson Project director and now in charge of mining operations for it, Urad and the Climax, Colo., mines, met with Roger Hansen, now executive director of ROMCOE; Bob Weiner, of COSC; Dr. Beatrice Willard, of the Thorne Ecological Foundation, and with others worked out what is known as "An Experiment in Ecology."

FROM BEGINNING

"The important thing," Distler said, "is that environmental considerations were a part of Henderson from the beginning."

The cooperative attitude of conservationists surprised some company officials and vice versa. But there were environmentalists who weren't—and aren't—happy about another development invading the mountains.

"It can't be hidden," Hansen acknowledged, "the landscape is considerably disturbed. But the impact is definitely minimized. There's no question about it."

"With all the construction, you can't tell now what it's ultimately going to look like," Hansen said.

"But the way it's going, the way it has gone and is intended to go, Henderson will be an ecological model for industrial development. I don't know of anyone in the country who has done the things Climax has done," he said.

WORK WITH PEOPLE

"We've been accused of doing a 'sell-out,' of being a turncoat to the environment and all sorts of things," Hansen, a lawyer and planner, said, "but environmentalists have to accept responsibility and to work with people in good faith."

The results of that faith are just beginning to show. For example:

—Ute Creek, the Williams Fork River, West Fork of Clear Creek and other streams are flowing clear and sparkling despite the enormity of the earthmoving and other work being done near them.

—Clumps of trees at the mine, near the railroad and powerline rights of way were left standing instead of being cut down. In one case a spruce fir stand with trees more than 300 years old still stands—a powerline route was changed instead of cutting the trees.

ABOUT 850 TREES MOVED

More than $20,000 was spent to dig up 850 trees—aspen, fir, spruce, pine—from 4 to 40 feet high and transplant them to provide a 100-year-long test screen to a high tailing pond. The test plot, that is watered almost daily, will show what kind of trees can best survive the transplant shock. Eventually more trees will be moved to form a screen more than a third of a mile long.

While more than 300 acres of timber were harvested much of the waste was chipped for mulch instead of being burned.

Topsoil is stockpiled until final earth moving and construction is complete and then it will be distributed, seeded and planted with grasses, shrubs and trees.

The 10,000 gallons of water needed each minute in the milling process is to be recycled, a process that saves water and avoids pollution.

WATER COOLED

The 5,000 gallons a minute of warm water encountered in sinking shafts to the working mine level is being aerated to cool and oxgenate it before it does into clear Creek via settling ponds.

New concepts in power line rights of way and screening were pioneered by Climax and Public Service Company of Colorado. No more wide, straight swathes through the mountains. The wires and towers are treated to blend instead of contrast with their surroundings.

Acres of grass now green disturbed slopes that would have been ignored before. A tertiary sewage treatment plant, almost a high-altitude experiment at 10,320 feet, is planned for the mine and offices.

In the next century, when mining is over, plans for using the reservoirs and tailings ponds already have been outlined.

Fundamental to all this are the ecological inventories made and continuing under the direction of Dr. John Marr, noted University of Colorado ecologist, and Dr. Richard Beidleman, of Colorado College, and others involved in the Colorado environmental movement.

"This way we know what the situation was, what it is, and if it changes how it's changed so we know what to do about it," Gilliland said.

"We'll have the actual data. Instead of guessing and theorizing, we'll know," he said. He was referring to plant, wildlife, water life and other continuing studies.

One of the really tough problems is tailings reclamation. Work at the old Climax, Colo., mine has proven the challenge. Dr. William Berg of Colorado State University, is seeking, reclamation answers under a Climax grant.

PROVIDE ACCESS

Not all the environmental improvements have worked. One that failed was Climax plans to open up thousands of acres of its own land in the Williams Fork Valley, and provide access to the Arapaho National Forest, for hunters and campers.

But the guests drove their vehicles across meadows, mountainsides and in other ways tore up the land. The area is now barred to vehicular access, Don Stephens, Climax, public relations representative, said.

"It's still open," he said, "you just have to walk or ride a horse."

He said Climax is considering running a twice-a-day truck route in the area this fall. Then hunters can haul their deer or elk to the access roads, and it will be brought out in the company truck to the county road.

The impact of the enormous project and anticipated satellite development on the Williams Fork is a major concern of Colorado Game, Fish and Parks officials.

"It's going to change deer and elk migra-

tion routes, population concentrations and other factors," Paul Gilbert, area supervisor at Hot Sulphur Springs, said. To the west, across the Williams Fork Mountains, development in the Blue River Valley is affecting deer, elk, upland game birds as well as stream life.

He estimated there at 500 elk and about 500 deer in the area now.

WATER COMPETITION

Competition for water by various interests, including Climax, Denver and other developers is also worrying trout enthusiasts, he said.

"They're making every effort they can to keep the stream clean, but it's the combination of effects including adequate stream flows that concern me," Gilbert said.

The opening of once closed ranches and foot access to the national forest is working out "surprisingly well," he said.

Distler said the company spent weeks searching for a mill and tailing site that would minimize the environmental impact. Of 36 sites, only two were environmentally satisfactory.

The result is a small scenic valley just west of the Williams Fork River, north of Ute Pass.

A portion of the two-track, narrow-gauge railroad between the tunnel portal and the mill will be visible from the county road that follows the river back up the valley from the Colorado River.

The tunnel will be more than 52,000 feet long. The Dravo Corporation has bored more than 3,000 feet underground from the Williams Fork side.

The tunnel and train are expected to cost $50 million.

MINING ORE WITH MINIMAL DAMAGE TO NATURAL BEAUTY

(By Robert Cahn)

EMPIRE, COLO.—Here in the mountains of Colorado, someone has changed the script.

Ordinarily, when an industry—in this case a major mining firm—plans a new development that may disrupt the environment permanently, conservationists are up in arms, writing to congressmen, threatening law suits, fighting the "polluters" every step of the way.

But, for once at least, the would-be protagonists are sitting down over a conference table and trying to work out the problems before they happen.

The new Henderson molybdenum mine of the American Metal Climax Company (AMAX) is not due to go into operation until 1974. Yet since 1963, a nine-member committee of company officials and representatives from the Colorado Open Space Council (COSC) have been holding frequent meetings.

Their purpose: to figure out ways in which the ore can be mined and a mill operated with minimal harm to the forests, streams, and wildlife and to the natural beauty of this Rocky Mountain area which straddles the Continental Divide, 40 miles west of Denver.

UNPLANNED MEETING

This "Experiment in Ecology," as it is called, is all the more unusual in that a "sister" mine of the company near Climax, Colo., is an acknowledged scar on the landscape. And conservation groups are protesting, and threatening a lawsuit, to stop a proposed molybdenum operation by another company in the Challis National Forest of central Idaho.

These days, starting any new mining development in wooded natural areas is to conservationists like waving a red flag in front of a bull.

The experiment came as the result of a mistake late in 1966 by two young lawyers. ——— Dempsey and Roger Hansen, when both of them showed up for a conservation meeting at the right place on the wrong night.

Mr. Dempsey was then assistant counsel for the AMAX molybdenum division, and Mr. Hansen was executive director of COSC, the Rocky Mountain area's biggest conservative organization. Being a week early for the scheduled meeting, they decided at least to have dinner and discuss their mutual interest in conservation.

INITIAL RESISTANCE

The talk quickly centered on the company's "Henderson" site near Empire, which Mr. Dempsey said might turn out to be one of the world's largest molybdenum deposits (molybdenum is an alloy used mostly for strengthening steel).

They agreed that a way should be found to avoid repeating the environmental damages of past operations in developing the Henderson site, and decided to see if the new mine could become an example of environmental planning. Shortly thereafter, four AMAX officials and five conservation leaders held their first meeting at the company office in Golden, Colo.

Both of the instigators of the experiment in ecology at first met doubt and resistance from within. Company officials felt that no matter how much they spent on environmental safeguards, they couldn't win—the conservationists would still be critical for the least changes that were made on the resources of nature.

The conservationists hesitated because they felt it might be just a public relations gimmick, and that the company would do as little as possible. Also, they were looked on with suspicion by other conservationists for consorting with the "enemy," and were accused of selling out their principles.

Mr. Hansen, who now is executive director of the Rocky Mountain Center on Environment, admits that if the proposed mine had been in a wilderness area, conservationists generally would have opposed it. But in this case the company had a right under existing mining laws to pursue the development and could not be legally stopped: The site was not in a protected wilderness area, nor was the land of unique and outstanding recreational or esthetic value.

FLORA AND FAUNA EXPLAINED

At the first committee meeting, Dr. Beatrice E. Willard of the Thorne Ecological Foundation showed color slides of the flora and fauna, and explained the interrelationships of resources in the fragile alpine ecology of the area.

The company executives, somewhat hesitantly at first, divulged in detail their plans for development of the mine and mill which would transform the buried ore into the powder-like molybdenum disulfide.

The major problem was: what to do with the finely ground rock tailings, the waste coming out of the mill which ordinarily is stored in ponds near the mine? More than 300 million tons of tailing are expected before the mine is exhausted.

The company planned, before the experiment in ecology started, to place the mill and the pond near the mine alongside a major highway through the scenic Rockies. But at the suggestion of the conservationists, a search was started for a new location.

EXPENSES REDUCED

After checking all possible locations within a 25-mile radius of the mine, company engineers discovered a site 13 miles away that was hidden from public view and where the mill could be built in a way that would create a minimum of pollution potential. But there was a catch. To reach this site the company would have to tunnel under the Continental Divide.

Company studies showed, however, that the $25 million cost for a nine-mile tunnel and a rail line above the Williams Fork Valley could be economically justified.

At first, the ideas for environmental improvement came from the conservationists. But now, says Mr. Dempsey, the spirit of conservation has caught hold with the engineers who seek new ways of doing things so that as much as possible of the natural setting can be preserved. And although many of the changes are costly and have to be absorbed in the interests of a better company image, some of the changes have resulted in reducing expenses.

On their part, the conservationists question everything, Mr. Hansen says. They even want an explanation for every tree the company wants to remove.

Some of the changes are small—but the cumulative effect is significant.

Instead of the ordinary galvanized steel buildings at the mine site, colored siding which blends with the setting is being used.

Culverts and trestles are planned so that the railroad will not cut off the natural animal trails.

The topsoil and dirt removed from the main mine shaft is being kept in a pile, and the land will be reclaimed when the shaft is no longer needed.

Slopes that have been denuded around the mine for construction purposes are being reseeded. And operations have been kept as compact as possible so that only 300 acres are being used for the mine.

PUBLIC ACCESS PERMITTED

The mill will use water recycled from the tailing pond. And a series of canals will be built above the pond so water running off the mountain will bypass the pond. This should remove the danger that floods might carry tons of waste tailings into the valley below the ponds.

The company is permitting public access on thousands of acres of land around the mill site which had been closed to the public by the previous owners.

The conservation spirit was even infused into the utility which provides power to the mine site. The Public Service Company of Colorado was persuaded to cut selectively only a few trees where power lines were to go instead of bulldozing a swath through the forests.

WIND PATTERNS CONSIDERED

A team of horses was then used to bring out the trees. The transmission towers were brought in by helicopter. And instead of using shining aluminum towers, the utility supplied wooden ones painted a shade of green designed to weather and blend into the setting.

Not all of the ecological problems have yet been solved. Dr. Dillard, for instance, feels that information about wind patterns in the area of the traling pond is inadequate, and that studies should be made to find out if the molybdenum tailings might be swept into the air on strong winds and carried into areas where they could affect plant life.

"We feel the experiment has been a success so far," says Dr. Dempsey. "However, we have a lot to learn about how we are going to do reclamation work on the tailing ponds. And we are planning to hire a full-time ecologist next month.

"The experiment has proved that an industry can work with conservationists in developing an operation. We hope it will serve as an example to others in industry and in conservation."

Mr. Hansen agrees that the experiment has proved that conservationists can cooperate with industry in some cases. But he points out that some types of development in some locations are not consistent at all with protection of environmental values.

In the cases, where environmental damage would far outweight the gains, conservation groups may legitimately oppose any

kind of development, or seek to have the development moved to an area where it will not cause damage.

EXCERPTS FROM STATEMENT BY GILES WALKER, DISTRICT GEOLOGISTS FOR AMAX EXPLORATION, INC., A SUBSIDIARY OF AMERICAN METAL CLIMAX, INC.

Before discussing our activities in the Stillwater area, I would like to outline AMAX's philosophy on environmental protection and briefly mention a few examples of the types of work that are undertaken under this policy.

AMAX is a widely diversified natural resources and minerals development company with worldwide operations in exploration, development, production, and sales of metals, non-metallic minerals and fuels. For many years, AMAX has taken the position that all feasible precautions should be taken at the Company's many different operations in order to protect the surrounding environment. The corporate policy governing all AMAX activities was expressed as follows by Mr. Ian K. MacGregor, Chairman of the Board:

"AMAX evaluates natural resource development plans with full consideration of their impact on the environment that has created these resources. There is no fundamental incompatibility between man's economic progress and the quality of life.

"AMAX management believes that the mineral wealth of this earth can be utilized for human progress in complete harmony with conservation and recreation. Protection of the environment and recycling of waste materials is implicit in the proper utilization of the world's natural resources.

"Dedicated to sound environmental planning, AMAX is vigorously attacking its own problems and making environmental considerations an integral part of the decision making process.

"We recognize a responsibility to assist in the development and implementation of appropriate environmental regulations at all levels of government. In the absence of defined environmental guidelines, AMAX will govern its actions in keeping with the highest standards of responsible conduct."

Some specific examples which illustrate the range of application of this policy are:

(a) *Air pollution control:* Sophisticated equipment was installed several years ago at our Carteret, N.J. copper smelter to further reduce emissions.

(b) *Mined land reclamation:* Our subsidiary, Ayrshire Coal Co., has had a program of mined land reclamation for over 20 years. Meadowlark Farms, an Ayrshire subsidiary, reclaims the surface mined land, after coal has been removed, to a useful state and harvests a wide variety of agricultural products from reclaimed land. They also maintain several herds of beef and dairy cattle on some of this land.

In summary, we of AMAX have worked and will continue to work to live up to the mandate incorporated in the Company philosophy that as a supplier and developer of natural resources, AMAX has a vital obligation to protect the environment in which we all must live. We pledge our support of legislation concerning exploration, development and mining activities, along with attendant mined land reclamation, which will provide a resonsable framework within which these activities can proceed.

We hope and trust that the citizens of this great Nation will never lose sight of the facts that industry is the lifeblood of this Nation, and that the minerals required by industry to supply goods and energy that our society demands are obtained by mining.

OIL INDUSTRY EVADING PRICE FREEZE, OVERCHARGING PUBLIC

Mr. PROXMIRE. Mr. President, President Nixon's price freeze is designed to give the economy some breathing time, to arrest the spiralling inflationary prices and, in most areas of the economy it is working. But not where retail gasoline prices are concerned.

The major oil companies are using their economic power, reinforced by recent decisions affecting the oil-import quota program, to get record high prices for gasoline.

The major oil companies set a retail price at which they hope to sell their gasoline. But, they do not often get it because the independent refiners and dealers force them to compete by lowering their prices. In the past year, there were only 2 weeks in which the actual average gasoline prices have been close to the major oil companies target prices.

The typical discount on gasoline from the target price set by the majors is 2.3 cents a gallon, or about 10 percent. But the majors are not discounting anymore because recent developments with the oil import quota program have given them a throttlehold on the independent refiners and dealers. The major oil companies are setting their target prices and keeping them there. The cost to the consumer is enormous.

With a domestic demand for gasoline of about 260 million gallons a day, the cost to the consumers of a price increase of 2.3 cents a gallon is $6 million a day or nearly $2.2 billion a year.

This price increase in the face of the wage-price freeze is clearly inflationary. President Nixon ought to take immediate action to roll it back.

We all know that the oil industry is not like any other industry. Under the guise of "national security" it has managed to become a Government-sponsored oligopoly with all the high prices and lack of competition that entails. This is amply demonstrated by the fact that, although inventories of gasoline are higher this year than last, prices are also higher. If the oil industry were competitive, one would expect a rise in inventories to result in a decline of prices. But this has not happened. On July 30, 1971, gasoline inventories for the United States were 4.24 million barrels higher than in 1970 and gasoline prices in the week ending 3 days earlier averaged 2.4 cents a gallon higher than in 1970. On August 13, 1971, stocks were 8.35 million barrels higher and gasoline prices were 2.37 cents a gallon higher than the year before. And, on August 27, 1971—two working weeks after the beginning of the wage-price freeze—inventories were 12.7 million barrels above the 1970 level and retail gasoline prices in the week ending 3 days earlier were 2.72 cents a gallon above 1970.

Since, as President Nixon has recognized, productivity is the key to combating inflation, the President ought to suspend the Connally Hot Oil Act which enables the oil-producing States to artificially limit the amount of oil which is produced in the United States. This would increase productivity in the oil industry almost immediately.

In order to increase productivity and lower prices in the oil industry, the President ought to make two minor changes in the oil-import quota program: All unallocated oil held by the Oil Import Appeals Board should be distributed by October 1, 1971, and unused allocations should be permitted a 2-year carry forward. Although the real solution to the high prices charged by the oil industry would be to eliminate the oil import quota program completely and use other more efficient methods to protect our national security, I realize that it would be politically impossible for President Nixon to do this and, thus, have not dwelled on it.

It is no coincidence that the two periods of extremely high gasoline prices were related to unused overseas crude oil allocations. The 1971 price increase came shortly after a special briefing with a "high administration official" that several oil reporters had on July 20, 1971. Within 2 weeks after the high administration official announced there would be no carryover, gasoline prices were at the record high.

The major east coast refiners are having the best of all worlds. Gasoline prices are high and, strange as it may seem, overseas ticket values are low. Ticket values are the hidden, indirect payments which east coast refiners pay inland refiners for the indirect use of allocations made to inland refiners.

The value received by inland refiners in the exchanges of their overseas import allocations with east coast refiners who actually used the imported oil is running about 50 cents a barrel. The value of an overseas import allocation east of the Rockies depends on the difference between the cost of crude oil in the gulf coast plus cost of transportation to the east coast and the cost of overseas oil plus tanker costs to the east coast. Based on a straight economic analysis of these costs the value of an import ticket should be between $1.55 to $1.80 a barel instead of 50 cents a barrel. On September 2, 1969, the oil industry's publication of record, Platt's Oilgram Price Service reported that overseas crude oil allocations were worth $1.25 to $1.50 a barrel on the east coast. Then the average value of crude oil there was $3.17 a barrel according to the IPAA and the spot tanker rate for moving oil from the gulf coast to the east coast was $4.42 a ton and the rate from the Persian Gulf was $7.76. Two years later the domestic crude oil price for the east coast was reported at $3.42 a barrel, an increase of 25 cents a barrel and the cost to producers of Persian Gulf oil had increased by about 27 cents a barrel. This would reduce the value of overseas allocations by 2 cents a barrel. But in the same period the spot tanker rate from the Persian Gulf decreased $4.33 a ton. With 7.1 barrels to the ton, this should enhance the value of import tickets by just over 61 cents a barrel. At the same time, the U.S. spot tanker rate from the gulf coast to the east coast decreased by $2 a ton, resulting in a decrease in the value of overseas allocations by 28 cents a barrel. Taken together, these factors indicate that the value of an import ticket should increase by 31 cents. But, instead, the value has declined sharply.

The same strange results are occurring on the west coast. Platt's reported that west coast import tickets were worth 85 cents a barrel on September 2, 1969. Assuming domestic oil prices went up 2 cents less than foreign oil prices and

comparing equivalent tanker rates, our analysis indicates that the value of west coast import tickets should be about $1.18 a barrel or an increase of about 35 cents a barrel. But, according to those that I have talked to on the west coast, the value of import tickets is about 20 cents or less a barrel. Something is wrong.

The real explanation is the economic imbalance between the major oil companies and the independent refiners which has been exacerbated by the Federal Government's policies. The major companies control the east coast refiners which actually use the imported oil while the independent refiners usually have inland refiners which do not actually use the imported oil. Because the regulations under the oil import quota program prohibit selling import tickets, these refiners are forced to exchange their import tickets with major oil companies for domestic oil. This barter system favors the majors when there are major changes in the market. This imbalance was accentuated even more by the statement of the high administration official that unused import tickets for 1971 would not be carried over but would be void at the end of the year. This means the value of the allocations for those who ordinarily exchange is steadily approaching zero because of the clock. What the administration ought to do is to make all 1971 allocations good for the next 2 years.

The relationship of unused allocations to oil prices demonstrates the competitive importance of small- and medium-size companies. Under ordinary circumstances, low ticket values would mean that oil import controls were not costing the consumers much. However, under the circumstances which I have outlined, the potential competitive impact of the allocations made to medium-size refiners is blunted. In view of the demonstrated effectiveness of allocations to such refiners, the allocation scale for 1972 should be modified to assure them a larger share of the overseas allocations.

Unfortunately, but predictably, the Oil Policy Committee seems to be moving in the opposite direction. According to the Oil Daily, OEP is deeply involved in an "exercise" preparatory to the introduction of a two-step scale which would increase the allocations of major international refiners at the expense of medium-sized refiners east of the Rockies. This will compound the economic power of the majors to the detriment of the medium-sized firms and consumers. Although, according to Oil Daily, the OEP is trying to develop a system which provides "greater equities" for refiners regardless of size. Experience indicates that this will work to the detriment of the consumers by inhibiting even more competition.

The squeeze on the independent inland refiners from the refusal to permit the carryover of 1971 overseas allocations was further exacerbated by the administration's refusal to release the allocations early enough so the independents could make adequate plans. As a result, in order to use all the imported oil which was finally allocated, imports would have to exceed the rate at which east coast refineries operate by at least one-sixth for the rest of this year. Clearly, an impossible situation.

The experience of the past year has demonstrated some of the inherent weaknesses of the quota system—flaws which are accentuated by the failure to provide a carryover of unused allocations. The present low values of oil import allocations, the record-high costs of gasoline and the present low tanker rates combine to spotlight the inequities within the industry, the inefficient use of resources, and the high cost to consumers; all caused by the oil import quota system. Yet, the Oil Daily reported that the "high administration official" felt that "after the grueling experience of last year," he did not see how a tariff system could operate. The quota system does not work, but there is no inclination to examine alternatives. Amazing.

Although I have not spent much time discussing residual fuel oil prices, it is a matter which always needs attention. The oil industry claims that east coast prices of residual oil correspond to world prices, but the facts indicate that east coast consumers are paying far more for residual oil than they should. According to Platt's Oilgram Price Service, low sulfur residual oil, 1 percent, on December 1, 1970, averaged $3.18 a barrel in Rotterdam and $4.22 in Boston. On August 30, 1971, the disparity was even greater; that product averaged $1.75 a barrel in Rotterdam and $4.32 in Boston. Over twice as much. The same disparity holds true for high sulfur residual oil: on the same dates the figures were $3.04 in Rotterdam and $4.03 in Boston, and $1.87 in Rotterdam and $3.75 in Boston.

President Nixon has taken a forceful step in imposing the wage-price freeze in order to halt the inflationary spiral and to help increase productivity. He ought to carry over that policy to the oil industry. I realize that the oil industry has long held a favored spot, but it is time the major oil companies were asked to give up some of their special benefits for the common good. A few minor changes in the oil import quota program by President Nixon to eliminate some of the most blatant inequities in the program would go far toward President Nixon's goals of stopping inflation and increasing productivity. I sincerely hope he or his advisers will consider the changes I have recommended and act upon them.

A TRIBUTE WELL DESERVED

Mr. McINTYRE. Mr. President, as a Dartmouth alumnus and a New Hampshire Senator it made me doubly proud to read a front page article in a recent edition of the Boston Globe entitled "Only 100 Watts—But It Packs a Power Punch."

The article, Mr. President, deals with WDCR, the Dartmouth community radio station. I say that advisedly. Although the station is owned by the trustees of Dartmouth College, it is a commercial AM station and its media message reaches far beyond the confines of the college. It serves an entire area—Hanover, and Lebanon, N. H., as well as White River Junction and Norwich, Vt.—and it does so in a most responsible manner.

Mr. President, it would be easy for a college radio station, manned entirely by students who donate their time, to settle for playing music and reporting the latest college news, but that has never been WDCR's idea of public service.

Instead WDCR has made every effort to cover the broad community interest—meaning selectmen's meetings, school board meetings, and other events of local interest. This responsible attitude was noted by Jeffrey McLaughlin, the Boston Globe's excellent New Hampshire reporter, who wrote the piece which appeared in last week's newspaper.

Mr. President, I hope that Senators will take interest in this fine article. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ONLY 100 WATTS—BUT IT PACKS A POWER PUNCH

(By Jeffrey McLaughlin)

HANOVER, N.H.—Once every four years, the eyes of the nation turn to New Hampshire, when this state holds the first presidential preference primary in the United States.

Battalions of newsmen, technicians and commentators tramp around in the snow behind the hopeful politicians looking for the post position in the presidential sweepstakes.

From the time Hart's Location in the White Mountains reports its half-dozen-or-so votes until the last ward in industrial Manchester yields its tally, and then for weeks afterward, analysis is piled upon analysis by the Robert Healys, Tom Wickers, William Buckleys, David Brinkleys, Eric Sevareids and Howard K. Smiths.

But when all is said and done, the members of the electorate most informed about what really happened in a New Hampshire primary would be those who have spent a good deal of their time listening to a nonprofit 100-watt radio station run here by Dartmouth College volunteers, up to now too young to vote.

The station is WDRC (Dartmouth College Radio), and, although it was granted its first license as a standard broadcast facility just a few years ago, it has already won major awards for public service in its coverage of the 1968 presidential primary and general election and for its publicity and promotion of a wide range of community-action programs at the time of the first Earth Day.

WDCR is the only commercial, standard broadcast radio station in the country run entirely by students, and it is one of the very few in northern New England to operate 24 hours a day.

Dartmouth provides space for studios and offices in Robinson Hall on the west side of the college green, but otherwise does not underwrite the operation in any way.

The station sells advertising and rents recording facilities to cover its own expenses, and the students get neither pay on nor academic credit for the hours they spend working at the station.

As an official extracurricular activity, WDCR's policies are supervised by college officials, but the degree of control exercised falls in a narrow range between none and almost none.

However, even though the college itself does not influence the type or quality of the broadcasting, the fact that the station is a nonprofit activity run for its own sake by unpaid volunteers does account for its general excellence and its particular ability to

cover elections with extraordinary thoroughness.

Senior William D. Downall of Nashville, Tenn., is this year's general manager. He estimated that about 125 students typically are involved in the station's operation. Most spend fewer than 10 hours a week at the work, but about a dozen put in 30, 40, 50 or even more hours every week.

"The purely academic part of college suffers somewhat," Downall noted, "although it is surprising how many good grade averages have emerged from the demands of the station.

"And most of us feel that the chance to become closely involved with local and state politics and occasionally with national politics, and of course with community projects, is one of the most valuable parts of our education."

The core of the station's listening area is the four communities of Hanover and Lebanon, N.H., and Norwich and Hartford, Vt. Virtually every governmental meeting in the core area is covered live by a WDRC newsman (as well as by newsmen from two other area stations and a daily newspaper in Lebanon), which means that the apathetic voter in this area is probably better informed about community activities than the politically conscious resident of a metropolitan area.

Three of the last four WDCR general managers (including Downall) have begun as newsmen, which for a profit-making radio station would be unheard of.

In addition, since there is no payroll to meet, on a busy night, four or five reporters can be out covering meetings with no thought to overtime or budget limitations.

It is in special event coverage that WDCR's built-in advantages, and the dedication of its hardest-working members, is shown to best advantage. Elections are the prime example.

Next March 7, for example, New Hampshire voters will be conducting their town meetings as well as voting in the all-important presidential preference primary. Because the state of Florida threatened to match the Granite State's first-in-the-nation status earlier this year, the New Hampshire legislature moved the date of the presidential primary back one week to the first Tuesday in March.

Vermont holds its town meetings on the first Tuesday as well, and thus, since WCDR's audience is split between the two states, the station will be faced with the responsibility of covering at least seven or eight town meetings as well as the primary.

The news director of a small profit-directed station anywhere would throw up his hands. In northern New England, where few small stations have even one full-time newsman, the prospect is hopeless.

But at WDCR, the challenge of March 7 is welcomed.

All the town meetings will be covered—two of them by live broadcast—and, even if there are four or five or 20 candidates in the Democratic race and two or three more on the GOP ballot, the WDCR reporter will be at each campaign headquarters on election night, armed at least with a tape recorder and a telephone credit card number and perhaps accompanied by an engineer.

In all likelihood, the reporter will have spent weeks researching his assignment, and it is unlikely that any public statement uttered by the candidate during the campaign will have escaped the reporter's notice.

It is not unfair to say that the WDCR reporter, who has not had to worry about the Florida or Indiana or California primaries, can be better prepared for his assignment election night than the highly paid major network newsman who must draw broad brush strokes on the political candidates.

At the anchor desk or "election central," the station has the advantage of being one of very few radio stations in all of northern New England that can afford to subscribe to both Associated Press and United Press International, and, since manpower constraints are virtually nonexistent, one student can be assigned to watch each of the major television networks to pick up commentary or nuances offered by the famous pundits.

The recording and broadcasting facilities are among the best north of Boston, and it's quite possible that the computer facilities of the college will be utilized. The concept of time-sharing on electronic digital computers was born at Dartmouth College under the leadership of Prof. Thomas Kurtz and mathematician-philosopher John Kemeny, who is now Dartmouth's president.

(Downall has a picture of the station headquarters on election night in 1960, and the deeply concentrating man behind the calculator in the foreground is Kemeny himself.)

Of course, manpower isn't everything, but the college seems to attract men of unusual journalistic ability, even though it offers no courses in the field. The list of very recent graduates of Dartmouth and WDCR (this year's top newsman, Bill Aydelott of Scranton, Pa., insists that it is a dual graduation for him since he spends more time at the station than in most other activities combined) who have gone on to almost immediate success in the commercial broadcasting business is long and impressive.

Scott McQueen and Ted Nixon, both of the class of 1968, now own several radio stations in New England and just opened a television station four miles from Dartmouth in Lebanon. John Gambling is an announcer at WOR in New York and is reported to be the highest-paid performer in the entire industry, at something like $300,000 a year.

Herb McCord is now general manager of WCBS–FM; Dave Graves is music director at WBZ at Boston; John Lippman is rising fast in the KING broadcasting ranks in the Pacific northwest; Dave Dugan is producing news programs at CBS headquarters, and the list will lengthen when some ex-WDCR men move from graduate school to the world of commerce.

Whether Aydelott and Downall and the other 123 WDCR staff members will follow in their predecessors' footsteps isn't known, of course, but many of this year's crop broke into radio broadcasting during the 1968 general election, and they want to tap this first segment of their careers with a flourish, so it is certain that one of the best places to find out what is happening in national politics next March 7 is right here in northern New Hampshire.

THE JACKSON FIVE

Mr. BAYH. Mr. President, I desire to pay tribute to a family of five young black musicians and singers from Gary, Ind., who have made a large contribution to music in the past few years.

The Jackson Five, young men ranging in age from 12 to 20, have captured the imagination of today's youngsters, especially black youth, as no musical group since the Beatles in 1964. The Jackson Five have become a symbol of pride among black youth, who can readily identify and relate to them. As special tribute, the Grambling University Marching Tigers, a predominately black university in Louisiana, saluted the Jackson Five in their half-time performance during Saturday's Morgan State-Grambling University NCAA football game.

Last year the group had four hit singles, and they have had two more already this year. In the words of 12-year-old Michael Jackson, the lead singer:

We started singing together after Tito started messin' with Dad's guitar and singin' with the radio. It was Tito who decided we should form a group and we did, and we practiced a lot, and then we started entering talent shows and we won every one we entered.

On September 19, the Jackson Five starred in their first television special, "Goin' Back to Indiana," on ABC–TV, with athletes Elgin Baylor, Ben Davidson, Rosey Greer, Elvin Hayes, and Bill Russell, and comics Tom Smothers and Bill Cosby as their guests. In addition, the Five were featured on September's cover of "Ebony" magazine and this fall will have a Saturday morning animated TV series modeled after them.

Group members include Jackie, who is 20, Tito 17, Jermaine 16, Marlon 14, and Michael 12. They started singing for fun and soon became known around Gary. Papa Joe, a crane operator, played the guitar and wrote songs to relax away from the job. Their mother, Catherine, sang blues and as they became old enough, the kids joined in the family music sessions. As Joe Jackson says:

It was fun the kids liked it and it was one sure way of keeping them home and not roaming in the streets of Gary.

Motown Record's recording star, Diana Ross, heard them during a benefit for Gary Mayor Richard Hatcher and the rest is history.

Despite their fantastic commercial success, members of the Jackson Five are continuing their education. Jackie has started college as a business administration major; the rest are still in secondary school and follow a rigorous schedule of homework, group practice, and classes. On weekends, holidays, and during vacations the group makes recordings and gives concerts around the country.

I think it important to recognize and pay tribute to the family unity that has made the Jackson Five the No. 1 soul group in the country. Indiana and the Nation are proud of the Jackson Five.

U.S. INTERESTS AND OBJECTIVES IN WESTERN EUROPE

Mr. ALLOTT. Mr. President, recent events have dramatized the close relationship between developments in the domestic and international spheres of economic action. Recently I had occasion to discuss some of the pressing problems of international trade with a distinguished and knowledgeable public servant, David B. Bolen, First Secretary, American Embassy, Bonn.

Today I want to share with the Senate a speech Mr. Bolen gave in Luxembourg to a group of students from Bates College. In it he gave the students a serious —and at times somber—introduction to the complexities of international trade arrangements. He said:

It may be useful at this point to outline some of the factors involved in the growth of protectionism and neo-isolationism in the United States. Domestically, there have been serious concerns about the deterioration in the United States balance of payments. Firms whose interests have been adversely affected by the Kennedy Round negotiations complained that we went too far too fast;

they contend that true reciprocity was not received. Competitive conditions in the United States are changing rapidly owing to new technology and transfers of technology abroad. These technological transfers have improved the capacity of low-income countries to compete more effectively in the industrialized world. This is a major factor underlying protectionist pressures in the U.S. textile industry. There have been concerns about the American multi-national corporations with American labor unions charging that operations of these corporations abroad cause a loss of jobs in the United States.

Finally, there has been a tendency in the United States for traditional supporters of liberal trade to be preoccupied with racial, ghetto, student, ecological, unemployment and other domestic problems generating strain in the American society. These factors cause as a minimum European uncertainty about U.S. economic, military and other commitments.

Mr. Bolen also issued a warning that our trading partners would do well to heed. He said:

Continued proliferation of preferential trade arrangements between the EC and less developed countries is still another factor in the emergence of protectionist sentiments in the United States. This problem will be further aggravated by the enlargement of the European Community because the preferences may be extended to certain British Commonwealth countries. Historically, LDC's such as the 18 African associated states have enjoyed special links with Europe. The Community has negotiated a number of agreements recently with North African and Mediterranean states. It seeks to defend all of these agreements on historical, economic and political grounds. The Community argues that preferential trade arrangements with LDC's contribute to their economic and political stability. We agree that these countries should be helped but not by transferring the cost of others through trade discrimination.

It is in the U.S. interest to oppose these preferential trading arrangements as being inconsistent with the GATT basic principle of non-discrimination. These arrangements contain reverse preferences which are detrimental to the interests of LDC's and run counter to the well established principles of non-reciprocity for developing countries. These agreements also set up pressures for the creation of additional North-South trading blocs that will have serious political implications.

In our opposition to preferential arrangements, we are not resting our case on principle. We have been able to document specific trade injury. For example, the arrangements with Spain, Israel, Tunisia and Morocco caused a 34 percent decline in U.S. citrus exports in 1970 while sales of countries benefiting from trade arrangements increased by 43 percent.

Mr. Bolen put particular emphasis on the problem of restrictions on trade in agricultural products:

The Common Market agricultural policy is the greatest single factor contributing to the emergence of protectionism in the United States. It has threatened to jeopardize farm bloc support for liberal trade. The Common Market agricultural policy is oriented toward the marginal producer. There are no production controls. The policy is characterized by high support prices and protected by variable import levies and export subsidies to move surpluses into third country markets. U.S. exports of items covered by the Common Market agricultural policy declined from $1.6 billion in 1966 to $1.3 billion in 1969. The system is very costly to European consumers and taxpayers. It has been estimated that the annual agriculture price support and related expenditures of the Community amount to $14.5 billion. In FY '69 the Community provided $1 billion for export subsidies alone. Thus the policy not only restricted U.S. export to the EC but the massive export subsidies put us at a disadvantage in third country markets.

The extension of the Common Market high agricultural support prices to the United Kingdom and other applicants at prevailing prices would further widen the area of discrimination against the United States. There has been a theory which holds that agricultural protectionism is the cement that holds the Community together. Today the EC can stand on its own competitive feet. It appears no longer necessary for the Community to transfer its economic, political and social problems in agriculture to third countries through the restrictive CAP mechanism. Accordingly, it is in the US interest to be more vigorous in insisting on lowering the levels of agricultural protectionism in the Community and negotiating a reduction in subsidies.

Mr. President, the Bates students were fortunate to have such a learned instructor. Mr. Bolen taught them an important lesson. It is not enough to proclaim an abstract allegience to free trade. Rather, free trade is a complicated political achievement that cannot be attained without tenacious diplomatic bargaining.

We are fortunate to have men such as David Bolen serving us. So that all Senators can profit from his wise speech, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

U.S. INTERESTS AND OBJECTIVES IN WESTERN EUROPE

APRIL 21, 1971.

(By David B. Bolen)

It is indeed a pleasure to have this opportunity to address this group of young Americans from Bates College here in the city of Luxembourg. I am particularly pleased to talk to you on the topic of US interests and objectives in Europe because you will be largely responsible in years to come for United States security and welfare. You face the challenge of bringing out the creative possibilities of an increasingly pluralistic and inter-dependent world. You will be responsible for forging a durable structure of international relationships to promote world peace and prosperity. This calls for strength in securing US interests. It calls for wisdom and skill in enlisting contributions from other nations. It calls for good judgment and perception in reconciling US interests with the hopes and aspirations of other nations.

We can no longer rely on an abuandance of our material resources to achieve our objectives. Greater efficiency in policy formulation and implementation will be required. Diplomatic skills of a high order will be required as we move from an era of confrontation to an era of negotiation. The challenge you will face fully justifies your trip here for a six-week on-the-spot study of European problems.

For many years the United States did not play a significant role in international affairs. We were not active in trying to change the destructive forces of nationalism in Europe. We entered two European wars reluctantly. We entered these wars late. It took the involvement of the United States in these conflicts to convince the American people that the United States could no longer put off its emergence on the international scene. We learned through experience that peace was indivisible. We learned that the United States could not survive as an island of stability in a world of chaos. We have therefore sought in the post-war period to use our power to build a world order capable of forestalling crises.

In Europe we realized that the interests of the United States could be best served by the promotion of growth and stability. Through the Marshall Plan we provided $13.5 billion for this purpose. Today Western Europe has a combined GNP exceeding $600 billion. It accounts for 25 percent of the total world industrial output. It has a prosperous population of 300 million. It has a tremendous reservoir of scientific, technological and managerial know-how. It is rich in cultural traditions. Those elements of national power suggest growing strength and autonomy. They are indicative of the ability of Western European countries to assume greater responsibility in promoting and protecting a community of interests and goals we hold in common. Clearly, if we are to forge a structure of international peace, Western Europe must be its cornerstone. It seems to me, therefore, that our first task is to promote the evolution of a viable partnership based on equality and mutual interests.

Today I would like to focus on three basic goals of US policy and interest in Europe which have remained constant for 25 years. These are Western European integration, the defense of our security, and the quest for East-West detente.

The United States has consistently over the past 25 years supported the concept of a united Europe. It appears to us that the world would be a much safer place politically, economically and militarily if there were a strong European political community, economic community and defense community within the Atlantic alliance.

The advantages of European unity are fairly obvious. It will help contain the destructive forces of European nationalism that have erupted into two world wars in this generation. Growth and stability can be best promoted by Europeans working together rather than in separate national compartments. Economic unity is necessary to provide markets of sufficient size to take advantage of modern technology and economies of scale. European unity is necessary to capture the modern technology required for today's expensive weapons system. It is fairly clear that Western European integration and solidarity are vitally important to the pursuit of an effective detente policy vis-a-vis Eastern Europe. Finally, unity is essential if Western Europe is to regain its vitality in world political affairs and share worries, opportunities and responsibilities with the United States as an equal partner.

The current impetus toward Western European unity is the most important single development over the last two years in both its economic and political dimensions. We welcome the opening of negotiations between the EC and Great Britain, Norway, Denmark, and Ireland for the enlargement of the Community to include ten member states. The Community has also opened talks with Sweden, Austria, Switzerland and other members of EFTA looking toward some form of economic relationship.

We have not considered Western European economic cohesion as an end in itself. Our goal has been a politically united Europe. There is some short-term cost and discrimination against third countries involved in creating a common market. This is compensated by long-term dynamic growth effects which help US trade and investments. We have considered it is in our interest to bear some short-term burdens to promote Europe's economic growth and to enhance prospects of closer European political cooperation.

Some progress has been made in movements toward a politically united Europe. The Community has developed plans for economic and monetary union. Progress toward such a union will have an important impact on the evolution of basic institutions and attitudes on which political unity can be

based. Economic and monetary union will involve the harmonization of fiscal and monetary policies and income policies. It will therefore cut deeply into the sovereign prerogatives of member states. The network of other arrangements created for harmonization of community policies have important political content. Public support for a united Europe seems assured. The future is bright as well over 70 percent of European youth support the concept of a unified Western Europe.

Last year the EC foreign ministers completed a plan for "political unification". This will involve semi-annual consultations by the foreign ministers on such issues as the Middle East. There has been much talk recently at the highest levels about a European government. We believe it is in our interest to encourage a single entity making policy for all of Western Europe. We are gratified to note this because we share the basic objective of European stability, Western solidarity and East-West detente. Western Europe as a sturdy pillar of peace would unfreeze some US power and enable it to be more selective in dealing with international political problems. We cannot, however, subordinate issues vital to our interests to the divided councils of an uncertain Western Europe. We need a voice with harmony.

European economic integration has been of mutual benefit to the United States and Western Europe. It has stimulated growth and stability. It has heightened the awareness of the interdependence between the United States and Western Europe. It is recognized, for example, that both surplus and deficit countries have obligations and responsibilities in the balance of payments adjustment process. There is recognition that mutual interests require prosperity on both sides of the Atlantic.

US trade and investment in the European Community have expanded substantially since 1958 when the Common Market was created. US exports to the Common Market have increased by more than 185 percent. Community sales to the United States were up by more than 240 percent. The United States has consistently recorded a substantial trade surplus with the European Community averaging $1 billion annually. A substantial and growing US trade surplus with the Community is essential if the United States is to meet its security, aid and other commitments around the world. US direct investments in the EC are estimated at $9 billion. Returns on these investments reached $1 billion in 1970. Europeans are contributing to our balance of payments adjustments process by expanding their direct investments in the United States. The percentage of increase in European direct investment to the United States now exceeds the rate of new US investments in the European Community. The expansion of the European Community to include the UK and other applicants will have a further effect in stimulating growth which will be to the long-term political and economic advantage of the United States as well as Western Europe.

The EC also provides a framework in which the Europeans can take action to improve the quality of life in the European Community. Economic and technological triumphs are not sufficient in themselves. The problems arising from material progress will require increasing international cooperation. The problems of overcrowded roads, urban ghettos, too much noise, dirty air and dirty water know no international boundaries. Some people argue we have already done great harm to the world's environment. They predict, for example, disaster from worldwide overheating of the atmosphere. One may question these predictions. The significant thing is that no one seems to be in a position to prove these alarming forecasts incorrect.

Therefore, one of our objectives in Europe is to develop cooperative programs to keep the world a fit place in which to live. As you are aware, President Nixon suggested that NATO form a Committee on the Challenges of Modern Society. The Committee was formed and has launched action programs with pilot studies on a range of problems. Cooperative production of experimental road vehicles for maximum passenger safety is underway, Agreement has been reached to end by 1975 the deliberate discharge of oil and oil waste into the sea. Problems of flood control and flood relief have been explored. The NATO Commmittee is consponsoring a major international conference on cities in Indianapolis next month. These actions will provide a body of knowledge that will be of benefit to East and West. It will help developing countries to anticipate and avoid the by-products of modernization. It is in the US interest to support and encourage these endeavors.

The dynamic growth effects of European economic integration have increased the capacity of Western Europeans to assume more of the burdens for promoting economic and social development in developing countries. It is in our interest to encourage increased contributions by the Europeans. This is also vital if we are to build an enduring structure of world peace.

In the absence of substantial transfer of resources from industrialized countries to the developing countries, social and political structures may emerge that could do grave violence to human dignity. It may well be that in years to come the chief security concern of the United States may not evolve around East-West confrontation at all. Rather, the chief area of the potential conflict will be where East-West interests clash in the developing countries.

Therefore, it is in our interest to work with the Europeans in easing the stresses and strains involved in the process of economic and social development in the third world. We have, in fact, sought to coordinate our efforts through the Developmental Assistance Committee of OECD. During the decade of the 60's net official and private disbursements from DAC countries to LDC's totaled $102 billion or an annual rate of $10 billion. The United States provided about 50 percent of this amount. By way of comparison, the annual rate of expenditures by the United States and the Soviet Union on strategic weapons alone was around $30 billion during the last 20 years.

The strained national consensus in the United States, growing neo-isolationism and concern about US over-involvement in world affairs raise some doubt about the future magnitude of the US aid contributions. In these circumstances we have been pleased to note that aid from Western Europe is increasing. These aid flows provide an interesting example of how two major sources of economic power can complement each other. For example, net official and private outflows by the European Community to developing countries increased from $2.3 billion in 1960 to $5.2 billion in 1969. US net aid outflows declined from $5.7 billion in 1968 to $4.0 billion in 1969. This decline in US aid was almost completely offset by an expansion in European aid and thus helped sustain the upward thrust of the total effort to help these countries develop free of turmoil and violence. We should recognize that US and Western European interests will not coincide as far as recipient countries or aid projects are concerned. These will be dictated by specific Western European interests which are unlikely to converge with specific American interests in individual LDC's.

It should be clear from these few remarks that the long-term economic as well as political benefits from European integration have outweighed the short-term economic costs to the United States. The Common Market has promoted economic growth and served as underpinning for military power. It has been an essential element of the Western counterweight to Soviet Bloc power and contained its expansionism. It has suppressed European nationalism and moved Europe down the road of common action and unity of purpose.

Our relations with the European Community are not without conflict. It has been assumed for years that a unified Western Europe would automatically lift burdens from the shoulders of the United States. Recently it has become evident that European integration will also pose problems for the United States. Indeed, during the past year the European Community and the United States have been on the brink of a major trade confrontation. This has been due to the rising tide of protectionism on both sides of the Atlantic. This development constitutes potential threats to world economic growth and stability and to the solidarity of the Western Alliance. Such a trade confrontation could cause serious disarray within the Western camp at the very time when solidarity is needed as an anchor for current efforts to negotiate a detente with the East.

It may be useful at this point to outline some of the factors involved in the growth of protectionism and neo-isolationism in the United States. Domestically, there have been serious concerns about the deterioration in the United States balance of payments. Firms whose interests have been adversely affected by the Kennedy Round negotiations complained that we went too far too fast; they contend that true reciprocity was not received. Competitive conditions in the United States are changing rapidly owing to new technology and transfers of technology abroad. These technological transfers have improved the capacity of low-income countries to compete more effectively in the industrialized world. This is a major factor underlying protectionist pressures in the US textile industry. There have been concerns about the American multi-national corporations with American labor unions charging that operations of these corporations abroad cause a loss of jobs in the United States. Finally, there has been a tendency in the United States for traditional supporters of liberal trade to be preoccupied with racial, ghetto, student, ecological, unemployment and other domestic problems generating strain in the American society. These factors cause as a minimum European uncertainty about US economic, military and other commitments.

A number of economic developments in the European Community tend to fan the flames of protectionism in the United States. Actions now being taken by the EC will embrace a trading bloc that includes all of Western Europe, the Middle East, Africa and part of the Caribbean area. This trading bloc will exclude the United States and account for 70 percent of total world trade.

American traders are well aware that the enlargement of the European Community will require some short-term economic sacrifices. It has been estimated that the United States will lose $100 million in agricultural exports annually if the agricultural support prices in the Community are not reduced. They were recently increased as a result of violent pressure by European farmers. The net adverse tariff effect on US non-agricultural exports will amount to about $300 million.

Some forces in the United States question whether there is need for the United States to incur any economic costs to achieve enlargement of the Community. Back in 1958 at the time Common Market was created, we could take a relatively passive attitude toward certain economic developments in the world that call for sacrifices from the United States. Today this is difficult because many Americans now question the axioms of pre-

vious generations that continue to guide our policies in some degree. It is in our interest to be more vigorous than has been the case in the past in protecting our trade interests. Failure to do so would run the danger of undermining American public support for our European policy. We have made it clear to the Europeans that we expect them to take into account the trading interests and GATT rights of the United States and other countries during the process of the enlargement negotiations.

The enlargement of the European Community will also involve the breakup of the European Free Trade Area and affect US commercial interests. The United Kingdom and the other applicants would have to raise their tariffs against the EFTA neutrals unless some other arrangement is worked out. Negotiations by the EC with the EFTA neutrals may begin this fall looking toward a customs union or free trade area type arrangement. Such arrangements will have the effect of enlarging the areas of commercial discrimination against the United States with no compensating political advantage to us.

Continued proliferation of preferential trade arrangements between the EC and less developed countries is still another factor in the emergence of protectionist sentiments in the United States. This problem will be further aggravated by the enlargement of the European Community because the preferences may be extended to certain British Commonwealth countries. Historically, LDC's such as the 18 African associated states have enjoyed special links with Europe. The Community has negotiated a number of agreements recently with North African and Mediterranean states. It seeks to defend all of these agreements on historical, economic and political grounds. The Community argues that preferential trade arrangements with LDC's contribute to their economic and political stability. We agree that these countries should be helped but not by transferring the cost to others through trade discrimination.

It is in the US interest to oppose these preferential trading arrangements as being inconsistent with the GATT basic principle of non-discrimination. These arrangements contain reverse preferences which are detrimental to the interests of LDC's and run counter to the well established principle of non-reciprocity for developing countries. These agreements also set up pressures for the creation of additional North-South trading blocs that will have serious political implications.

In our opposition to preferential arrangements, we are not resting our case on principle. We have been able to document specific trade injury. For example, the arrangements with Spain, Israel, Tunisia and Morocco caused a 34 percent decline in US citrus exports in 1970 while sales of countries benefiting from trade arrangements increased by 43 percent.

It is clearly in the US interest to continue its opposition to preferential trade arrangements and to press for a generalized preference scheme as an alternative for dealing with the trade problems of LDC's.

The Common Market agricultural policy is the greatest single factor contributing to the emergence of protectionism in the United States. It has threatened to jeopardize farm bloc support for liberal trade. The Common Market agricultural policy is oriented toward the marginal producer. There are no production controls. The policy is characterized by high support prices and protected by variable import levies and export subsidies to move surpluses into third country markets. US exports of items covered by the Common Market agricultural policy declined from $1.6 billion in 1966 to $1.3 billion in 1969. The system is very costly to European consumers and taxpayers. It has been estimated that the annual agriculture price supports and related expenditures of the Community amount to $14.5 billion. In FY '69 the Community provided $1 billion for export subsidies alone. Thus the policy not only restricted US export to the EC but the massive export subsidies put us at a disadvantage in third country markets.

The extension of the Common Market high agricultural support prices to the United Kingdom and other applicants at prevailing prices would further widen the area of discrimination against the United States. There has been a theory which holds that agricultural protectionism is the cement that holds the Community together. Today the EC can stand on its own competitive feet. It appears no longer necessary for the Community to transfer its economic, political and social problems in agriculture to third countries through the restrictive CAP mechanism. Accordingly, it is in the US interest to be more vigorous in insisting on lowering the levels of agricultural protectionism in the Community and negotiating a reduction in subsidies.

The common interests require concerted action to move toward freer trade and restraint in protecting special intests. A new round of trade negotiations, covering tariffs as well as non-tariff barriers, is indicated in order to move further toward freer trade. We need to negotiate international agreements on the level of agricultural support prices. There need to be improved consultation procedures, to deal with specific current trade problems in order to insure that commercial policy issues do not jeopardize the broader interests. Finally, there should be improved procedures and techniques for dealing with the trade and aid problems of LDC's.

I would like to turn to the subject of the defense of our security. This has been provided by NATO. The NATO system has provided a shield for continued economic, political and social progress in Western Europe. It is doubtful if the Common Market would have been possible without NATO. The fundamental goals of NATO are to insure Western solidarity, to deter aggression and to defend if deterrence fails.

Many voters, legislators, and scholars have raised questions about the continued burden of defense budgets around the world. The knowledge that Americans spend about twice the percentage of GNP as do Europeans contributes to pressure in our Congress for the reduction of troop presence in Europe. President Nixon has decided that, given a similar approach by our Allies, the United States would maintain and improve its forces in Europe, and not reduce them without reciprocal action by our adversaries.

I believe the United States troops in Europe serve American interests.

The NATO system and US troop presence should be assessed against the background of the Warsaw Pact capability. Prudence demands that we give greater weight in planning our defense to capability rather than to our estimate of Warsaw Pact intentions, admittedly a risky business. The fact is that the Soviet Union continues to improve and expand its military power. Today the Warsaw Pact countries have an estimated 860,000 combat troops in Central Europe compared with 600,000 for NATO. There are 20 Soviet divisions in East Germany as compared with a US Army combat force of 4⅓ divisions in the European theater. Furthermore, the forward position of Warsaw Pact forces and shorter supply lines give them an advantage. The substantial number of Warsaw Pact divisions along the West German border are not without significance.

The NATO and Warsaw Pact nuclear strike capabilities are about equal. The approximate balance of nuclear power means that conventional forces are more important today than ever before. These conventional forces give credibility to the doctrine of flexible response. No political leader is prepared today to be left with a choice between nuclear devastation and capitulation to Soviet threats. The presence of American troops gives credibility to our security guarantees. These troops are an integral part of the conventional defense strategy of NATO and a direct link with American nuclear power.

Politically US troop presence in Europe insulates Germany against residual Western European suspicions. The absence of US troops would make the 500,000 German soldiers, sailors and airmen appear uncomfortably large to small countries like Luxembourg and Holland. Thus US troop presence is important for continued development of Western European unity, which is important in itself for dealing with residual fears of German nationalism.

A withdrawal of U.S. forces from Europe would cause Europeans to lose confidence in our security guarantee. They would become more vulnerable to Soviet threats and blandishments. Europeans would probably devote less energy and resources to their own defense. In all probability they would seek an accommodation with the Soviet Union; this would be an accommodation sought on the basis of weakness rather than strength.

If the Soviet leadership is successful through either political or military means in extending its influence over Western Europe, it would then control an area with a GNP of $600 billion with tremendous scientific and technical know-how. This would not only change the balance of power in Europe. It would also effectively change the world balance of power. For the first time the Soviet Union would control sufficient resources to be in a position to impose its will on the entire world. U.S. national security would clearly be threatened.

In the light of these considerations it is in the U.S. interest to maintain its troop presence in order to contribute to the NATO mission of deterrence, defense and solidarity.

Our task in the future will be to induce the Europeans to share more of this total defense burden without reducing overall capability that is not warranted by objective political and military considerations. The last NATO Ministerial in Brussels highlighted the need for more conventional deterrence and set precedents in the area of more equitable burdensharing. Ten European nations agreed to provide almost $1 billion over five years for improvement of their own forces and an additional infrastructure program for better communications and aircraft shelters. About $450 million of the total will be devoted to communications and aircraft shelter programs.

Our third basic objective is to improve Western security through negotiation in order to build a more stable order between East and West. Our security depends on more than Western solidarity, military and economic power. These factors have set the stage for a negotiated settlement of outstanding issues with the Soviet Union and Eastern Europe.

East-West conflict in Europe is due in large measure to clashes involving the situation in and around Berlin, the division of Germany, confrontation of two military blocs, relations between countries of Eastern Europe and Western Europe, and issues revolving around barriers to travel and intellectual intercourse.

Problems involved in East-West relations are deeply rooted in the cold war. Solutions are to be found in deliberate and sustained effort and not in some spectacular development. It is in the US. interest to negotiate these issues. We seek a detente that provides conditions of mutual security that will allow for expanded intra-European contact and cooperation without jeopardizing the security of any one nation. As you are well aware, Soviet policy frequently interprets detente as the ratification of the status quo in Central Europe. Furthermore, the Soviet Union

has tended to offer a differentiated detente. It has been prepared to negotiate with some countries on some issues of primary interest to the Soviet Union while keeping up the pressure elsewhere in the world. For example, the Soviet Union has shown an interest in expanded economic cooperation with Western Europe with the objective of gaining access to western capital and technology. Its activities on the other hand have tended to make a settlement of the Middle East crisis more difficult and, therefore, continue to threaten the southern flank of NATO.

A wide variety of negotiations and contacts are now underway to improve security through negotiation. The United States, Soviet Union, United Kingdom and France are holding the Four-Power Talks at the United Nations on the Middle East. France reached agreement with the USSR in 1970 for periodic consultations on major world issues. The Federal Republic of Germany has negotiated new treaties with the USSR and Poland. For the first time, the Chancellor of the Federal Republic met with the Premier of East Germany. Talks are continuing at the state secretary level between the two parts of Germany. Negotiations may be open soon with Czechoslovakia. The United States, Soviet Union, Great Britain and France are negotiating on Berlin. Finally, the United States is negotiating with the Soviet Union on strategic arms limitation.

These issues engage the efforts and affect the interests of NATO, the United States and Europe as a whole.

The problem of Germany remains the key to East-West issues in Europe. The United States welcomes the efforts of the Federal Republic of Germany to normalize its relations. We also welcome the treaty which was signed by the Federal Republic and the Soviet Union in August 1970. Because the issues involved affect the wide range of rights and interests, we have undertaken close consultations with the Federal Republic of Germany. We have agreed that the negotiations should not adversely affect the continuing Four-Power rights and responsibilities concerning Berlin and Germany as a whole.

The Berlin negotiations provide an opportunity for the Soviet Union to clearly demonstrate a genuine interest in improving relations with the western world. A satisfactory agreement on Berlin would require (a) improved access to the City and circulation within the City, (b) acceptance by the Soviet Union of the ties between the Federal Republic and the western sectors of the City, and (c) a reduction in discrimination by the Soviet Union and Eastern European countries against Berliners and enterprises located in Berlin. Such an agreement would make a large contribution in the reduction of tensions.

The Strategic Arms Limitation Talks have important implications not only for the security of the United States and the Soviet Union, but for Europe as a whole. For this reason, the United States considers close consultations to be in the interest of all parties whose interests are affected. The discussions so far give reason for optimism that an agreement to limit at least some strategic weapons can be reached. The successful conclusion of these talks would not only reduce tensions; it would release substantial resources that could be diverted to peaceful use. In the past twenty years the United States and the Soviet Union have spent some $600 billion on strategic forces, or an annual rate of $30 billion. It is clearly in the interest of the United States and the Soviet Union to avoid expenditures of a similar magnitude during the next twenty years.

NATO has proposed exploratory talks among interested states on the mutual and balanced force reductions. This is another specific issue on which agreement could make an important contribution in easing East-West tensions and diverting resources to productive use. The mutual objective should be to create a more stable balance at lower levels and at lower cost.

The Warsaw Pact last year revived the notion of a European security conference. It proposed two issues—renunciation of force and the threat of force—and widened commercial, scientific, technical and economic relations between states. The Soviet formulation for the European security conference would not address the main security issues, the German question, Berlin, mutual force reductions. It would deal with broad general issues. The United States and its allies are prepared to negotiate with the Soviet Union in any forum. But we are determined to deal with substance rather than atmosphere. Once a political basis for improving relations is created through specific negotiations already in progress, a general conference might build on it to discuss other intra-European issues and forms of cooperation. The NATO Ministers at their last meeting affirmed the readiness of their governments, as soon as the talks on Berlin have reached a satisfactory conclusion and insofar as other ongoing talks are proceeding favorably to enter into multilateral contacts with interested governments to explore when it would be possible to convene a conference or a series of conferences.

In conclusion I would note that the international political system is in a stage of transition. This transition will be greatly influenced by forces of change within the major centers of power. In the Soviet Union the requirements of scientific and technological innovation are increasingly dysfunctional to the Soviet political system and will produce political tensions. In the United States we face problems in urgent need of solution. Black Americans are restless and will not wait much longer for the attainment of those rights embodied in our constitution. Islands of poverty and urban ghettos in a sea of wealth cannot be tolerated much longer. American youth seem to question many of the assumptions which led to our basic post-war policies. For them, Vietnam may be more relevant to the shifting complex of today's world than earlier axioms that led to America's break with isolationism. Solutions to many of our problems will require massive expenditures and the attention of our genius. Existing pressures are bound to affect both the will and ability of Americans to pursue foreign policy goals. It is for these reasons that the United States has sought to substitute partnership for domination and negotiated agreements for situations of tension.

It is clearly in our interest to hold high the vision of a united Europe within the NATO Alliance. As Europe becomes politically revitalized and expands its horizons, it will become easier for the United States to reassess its own priorities and formulate courses of action that will serve the interests of Europeans and all mankind. We should recognize, however, that the interests of a united Europe will not always coincide with U.S. interests and that statesmanship will be required to reconcile differences and to forge a true partnership.

HON. BELLA ABZUG ON WOMEN'S POLITICAL RIGHTS

Mr. PROXMIRE. Mr. President, women comprise 53 percent of the Nation's electorate. Yet, as New York Representative BELLA ABZUG, has pointed out:

It is one of the ironies of history that ever since women won the vote . . . , they have been using it almost exclusively to elect men to office.

I think that it is wrong for Senators to say that political equality exists between the sexes in the country while only one of of our 100 Members is a woman.

It is time for the Senate to take a firm stand in favor of full representation and full involvement of women in our political system. That is why the Senate should ratify the International Convention on the Political Rights of Women soon.

Until women are regarded as fully equal participants in American politics, they cannot be regarded as fully equal members of American society.

If we believe that equality of opportunity between the sexes is a constitutional principle, then it seems to me that it would be wholly consistent with hallowed American values for the Senate to ratify the Convention on the Political Rights of Women.

And if the present Members of the Senate do not reaffirm that principle of political equality, I am certain that the underrepresented majority of the electorate will ultimately express its displeasure in a manner most displeasing to many incumbents.

I ask unanimous consent to have printed in the RECORD an article by Representative ABZUG which spells out some of the ways in which women are excluded from positions of political power in America. The article was published recently in the New York Times.

There being no objection, the Article was ordered to be printed in the RECORD, as follows:

POWER TO THE MAJORITY—WOMEN

(By BELLA S. ABZUG)

I am one of those rare creatures, a Congresswoman and that may explain why I was invited recently to appear on a Bob Hope TV comedy show as part of an all-female variety act. I turned it down, of course, because I see nothing funny about the scarcity of women political leaders in our country. In fact, I think it is a national scandal.

Women members of Congress are not only scarce. They appear to be a vanishing species. Ten years ago there were 19 women in Congress, 17 Representatives and two Senators. Today, out of 345 members of the House, only 11 are women, and we're down to just one in the Senate.

There are no women on the Supreme Court or in the President's Cabinet. There are no women Governors. President Nixon has appointed just one woman ambassador—to Barbados. Of some 10,000 top jobs in the Nixon Administration ($26,000 annual salaries and up), only 150 are held by women.

And so it goes. The freeze-out of women from political power is almost total, and it is one of the ironies of history that ever since women won the vote (51 years ago today), they have been using it almost exclusively to elect men to office.

We're going to change that. Last month in Washington several hundred women from all parts of the country met to organize the National Women's Political Caucus. The movement which we have started is catching on in cities and states all across the U.S.

Women are a majority of the population. We are 53 per cent of the electorate. As a matter of right, as a matter of simple justice, we should be fully represented in the political power structure in all branches of Government, at all levels. Women have learned that discrimination exists not only because of century-old prejudices but also because it is profitable.

When we consider that more than 31 million women work for a living (most of them because they have to), it is clear that industry has saved billions of dollars by short-changing its women employes.

Women either are segregated into the lowest-paying drudge jobs or, if they do get good jobs, they are paid less. In 1969, the average American woman who worked full time earned only $60 for every $100 earned by the average man. Black, Puerto Rican, Chicano and Asian women—the most concentrated in low-wage, low-skill jobs—earned less than half that.

Even a high degree of education and training does not assure a woman equality of treatment. A woman college graduate typically makes about $6,694 a year. That's roughly the same income earned by a man with an eighth-grade education.

The situation is deteriorating. Compared with men, women are making less today than they did in 1955 and, as in Congress, their numbers are decreasing in the professions. Women account for only 9 per cent of all full professors, 7 per cent of physicians, 3 per cent of lawyers, one per cent of Federal judges.

Only by getting women in large numbers into positions of political power and leadership in government can this blatant discrimination end. With political power, women can secure approval of the Equal Rights Amendment and its complementary Women's Equality Act.

We can guarantee enforcement of anti-discrimination orders issued by the Equal Employment Opportunity Commission, a Government watchdog that currently exists without teeth.

We can end the states myriad anti-abortion laws that have condemned literally millions of American women to back-alley, dangerous, degrading, illegal operations.

We can set up a nationally funded system of child-care centers to provide facilities for the four million youngsters of preschool age who have working mothers. We can change the tax laws to allow working women the right to deduct the full cost of a housekeeper or nursery for her children. That is surely as legitimate a working expense as a businessman's lunchtime martinis.

Women, on the whole, bring special qualities of humanism, compassion, and creativity to society, and these are the qualities that our nation most desperately needs right now. If we had several hundred women in Congress, not just a dozen, would we still have men dying in Vietnam? I think not. But if anyone disagrees, let's put it to the test. Starting in 1972.

COMPREHENSIVE CHILD DEVELOPMENT

Mr. MONDALE. Mr. President, during the recent Senate debate on S. 2007, I made several references to the impressive coalition of over 20 organizations who helped develop and shape the monumental child development provisions in that bill.

Through a clerical error, this list of organizations was incomplete when it was printed in the CONGRESSIONAL RECORD.

In order to correct the RECORD, I shall set forth below a complete list of the organizations at this point in my remarks:

Amalgamated Clothing Workers; AFL–CIO; Americans for Democratic Action; Americans for Indian Opportunity Action Council; Black Child Development Institute; Committee for Community Affairs; Common Cause; Day Care and Child Development Council of America; Friends Committee on National Legislation; Interstate Research Associates; International Ladies Garment Workers Union; League of Women Voters; Leadership Conference on Civil Rights; National Council of Churches; National Council of Negro Women; National Education Association; National League of Cities and U.S. Conference of Mayors; National Organization of Women, President and Vice President for Legislation; National Welfare Rights Organization; United Auto Workers; U.S. Catholic Conference, Family Life Division; and Washington Research Project Action Council.

EDITORIAL OF THE YEAR FROM THE ARGUS-CHAMPION

Mr. McINTYRE. Mr. President, it is certainly a great honor for the editor of a weekly newspaper to win the Golden Quill Award for the best editorial of the year. It is an honor because the editorial is selected from among more than 100,000 competing pieces from newspapers throughout the English-speaking world.

It is a high honor, Mr. President, but I am not surprised to find that the 1971 editorial of the year was written by Edward DeCourcy, editor and publisher of the Argus-Champion of Newport, N.H. It must have come as some surprise, however, when the judges discovered that the runnerup editorial was also written by Edward DeCourcy.

To the people of Newport and to thousands of others across our State this award is long overdue recognition for a man who has never been afraid to call them as he sees them.

Mr. President, the editor of the Chicago Times more than a century ago said of newspapers:

It's a newspaper's duty to print the news, and raise hell.

I suspect that in the very best sense possible, that is Ed DeCourcy's goal. He prints the news in a most unbiased fashion, but when he feels strongly about something, he tells his readers so, forcefully and eloquently, in his editorials.

I have admired and respected my friend Ed DeCourcy for many years, Mr. President, and I am proud to see that he has received this honor. I ask unanimous consent to have printed in the RECORD the text of the two award-winning editorials.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

NONE OF THEIR BUSINESS

The police state virus has infected some Legislators who want State Police to get names of those who attend Washington rallies.

Reprinted below is the Golden Quill editorial of 1971, which originally appeared in The Argus-Champion on April 29, 1971. It was selected from more than 100,000 editorials in weekly newspapers throughout the English-speaking world. The original selection was made by the staff of the International Conference of Weekly Newspaper Editors, which sent some thousand editorials on to Dr. Clifton O. Lawhorne, chairman, Dept. of Journalism, Texas Christian University, who selected the winner and the top 12, known as The Golden Dozen.

The names of New Hampshire residents who go to Washington, D.C., to participate in the Rev. Carl McIntyre's "Win the War" rally on May 8 are none of the business of the State Legislature or of the New Hampshire State Police.

Going to Washington, or Concord, or Kellyville, or anywhere else to express an opinion is a fundamental American right. It makes no difference what the opinion may be. In Russia, Cuba or Spain anyone can express an opinion, provided it is the party line, but he dissents at his peril.

But we are free. In the United States of America the Constitution guarantees "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

It was no accident that that right was written into the Bill of Rights. The American people knew in 1789 what it meant to live under despotism. They knew the terror of life in a country where dissent was unlawful. They knew more. They knew that no government could long endure unless the people had the right to dissent. They knew that difference of opinion, debated, argued, discussed, is the route to wise decisions, and wise decisions are essential if self-government is to survive.

So anyone in New Hampshire who wants to join the Rev Mr. McIntyre's demonstration in Washington on May 8 should be able to do so without fear that his act will become another entry in a State Police dossier.

Yet the terrifying truth is that 10 members of the New Hampshire House of Representatives, the supreme law-making body of this state, tried last week to have the State Police ordered to supply them a list of the New Hampshire residents who had participated in the anti-war rally in Washington last week.

The request, of course, was absurd. New Hampshire has a good State Police force, but not good enough to be able to find out who among the quarter million Americans in Washington for that anti-war rally was from New Hampshire.

And aside from all that, the law enforcement agencies in this state have more than they can efficiently handle right now, enforcing the laws of this state, preventing and solving crime.

But that is not the point. The terrifying aspect of the incident in the Legislature is that men in power in this state want to use that power to stifle the opinions of persons whose opinions differ from theirs.

The police state virus is infecting too many persons in this country. The humorous columns about persons who are offended if anyone thinks they are not important enough to be included in the FBI or Army Intelligence files, are no longer funny.

Echoes of the pre-war Nazi or Communist life, the middle of the night knock on the dissenter's door after which he was seen no more, are growing louder.

If we want America to continue to be the land of the free, all of us, State Legislators included, must remember that there is no freedom for anybody unless there is freedom for all, and that the first freedom is freedom of thought.

THE SPECTATOR

(By Edward DeCourcy)

This Spectator, originally published Aug. 13, 1970, is reprinted here because it was judged by the International Conference of Weekly Newspaper Editors as runner-up to the Golden Quill editorial, and both were written by the same editor.

THE SORCERER AND THE PEACE-LOVERS

Once upon a time there dwelt a happy people in the land of the peace-lovers. They were happy because they had no enemies. They had defeated them all in wars. They were happy because they loved their neighbors, even though they knew they were better than their neighbors.

They were happy because they had clean air and fresh water and quiet streets. They were happy because most of them had plenty to eat, and those who didn't didn't whine about it.

They were happy because they were well. They were well because they could buy ointments and nostrums for any kind of ailment, along with lemon phosphates, at the local drug store. They knew the ointments and nostrums would cure their ailments because the manufacturers told them so.

Life was good in the land of the peace-lovers. The earth was fertile. Crops flourished. Herds multiplied.

The King ruled his people with tender mercy because he loved them, and they loved him, too. The King knew the people loved him because his courtiers told him so. The happy people knew the King loved them because the courtiers told them so.

And there was apple pie with vanilla ice cream.

One day a balladier went to the castle and sang a sad song for the King. It told a dark tale of evil men beyond the sea, who looked with envy on the land of the peace-lovers, men who plotted to conquer them.

So the King clapped his hands and summoned his courtiers and he commanded the balladier to sing his song again. And the courtiers looked at one another, and they were sore afraid.

So they pondered how they should advise the King, so he could stop the evil men from destroying the land of the peace-lovers. And the King listened. And they did build many big ships to guard their shores, and they built flying ships, and they strung magic wires around their border that would tell when an enemy approached. And they built wagons and carts and put wheels on boats. And they made bigger and faster and faster and bigger guns.

And still the King was afraid, because the balladier came again, and his song told that the evil men were doing even as the people in the land of the peace-lovers. So the King summoned his alchemists and told them to build something that could destroy a whole city like magic, and they did.

And again the balladier came, and told the King it was not enough because the evil men had captured an alchemist and tortured him and he had told them also how to build something that could destroy a whole city like magic.

And the people in the land of the peace-lovers grew uneasy. They knew they were better than their neighbors whom they loved, but they did not trust them. They wondered whether some of the neighbors they loved might be cousins of the evil men beyond the sea.

Then one day there came a sorcerer to the castle, and told the King he could make a vapor that the King's men could spread quietly among the evil men and kill them all peacefully.

And the King and his courtiers were glad, and they commanded the sorcerer to make the vapor and put it in metal vessels ready to be taken to the land of the evil men.

And the years passed, and the evil men made nasty remarks, but they did not try to conquer the land of the peace-lovers.

One day a courtier happily counting the vessels of deadly vapor, discovered one leaking.

Then it was that the King and courtiers looked at each other. And the King's eyes lighted. Quoth he, "Verily, if the sourcer's vapor can kill the evil men peacefully, it can kill the happy people in the land of the peace-lovers too."

They looked for the sourcerer so they could command him to make the deadly vapor harmless, but he did not know how. And more of the vessels began to leak.

And there was panic among the courtiers. So the King commanded that the vessels be encased in concrete and put on a ship and dumped into the sea. And they were.

And the years passed. By and by the cement cracked and the deadly vapor leaked out and the fishes of the sea died happily. And the vapors spread to the shores and the beasts and the birds died happily. Then the vapors spread to the happy people, and they died happily, and once again there was peace in the land of the peace-lovers.

FORCED BUSING OF CHILDREN

Mr. BROCK. Mr. President, in the last few months, particularly in the recent days which have brought the opening of schools, I have received literally hundreds of letters from parents and others who are dismayed to the point of despair by conditions brought on by the differing degrees of forced busing of children for the avowed purpose of achieving some sort of mythical racial balance.

Each edition of the newspapers brings more distressing news of missed buses, wrong buses boarded, more enrollment in private schools, dropouts, boycotts, and even families moving or sending their children to stay with relatives to avoid the undue hardship and physical and psychological damage from arbitrary and capricious forced busing. All this while the courts and other authorities act in direct defiance of legislation written into law by this body.

It would seem that the only recourse open to the American people at this point is to amend the Constitution, and that is why I introduced Senate Joint Resolution 112 on June 9. I believe such an amendment would effectively protect the integrity of the neighborhood schools.

The Washington Star recently published an article by James J. Kilpatrick which points up the deep concern which is shared by educators in this matter. I ask unanimous consent that Mr. Kilpatrick's remarks and the text of Senate Joint Resolution 112 be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

THE BUS ROUTE FROM EDUCATION TO MADNESS

(By James J. Kilpatrick)

ROANOKE, VA.—Several hundred principals, supervisors, and others engaged in education at the elementary school level met here a few days ago for a conference on what ails them. The delegates came from six southern states, whites and blacks alike, and for three days they listened dutifully to a program built around trade unionism and the new worry of "accountability."

These are important concerns. The unionization of public school teachers has become a fact of educational life, and the principals, understandably, were eager to know all those things about contract negotiation they always had been afraid to ask. The business of accountability embraces the growing demand of parents for a kind of quality control in the classrooms: If Miss Jackson's third-grade pupils fail to learn to read at third-grade levels, fire Miss Jackson.

But back in their rooms, or over a drink in the hotel pub, these deeply troubled professionals were not talking of militant unions or critical parents. They were talking of busing. A summer conference at a modestly posh hotel ought to mean happy times. These were the saddest sessions I ever sat in on.

The term "busing" has come to mean a great deal more than the mere physical transportation of pupils from Point A to Point B. In today's lexicon, it connotes such measures as "pairing" and "clustering" and "closing," and by extension it takes in all the problems of discipline, white flight, and school-community relations that afflict southern school systems today.

By way of example, consider two elementary schools in a major southern city. One of them, Hyde Park, on the east side of town, is located in a section of the city that has been wholly black for 70 years. The other, Bellhaven, on the west side, serves a neighborhood once wholly white but now substantially mixed. Each of the schools has a capacity of 800 pupils.

Under court order, Hyde Park and Bellhaven were paired for the 1970–71 school year. Roughly 160 white children were shipped every day to Hyde Park, and roughly 120 black children were shipped every day to Bellhaven. All six grades were maintained at each school, and the situation created problems that were "real but not intolerable."

For the coming year, the schools are to be "split-paired." The local District Court has decreed that all schools in the city system must be racially mixed, as nearly as may be practicable, in a ratio of 65 blacks to 35 whites. A part of the decree requires that Hyde Park abolish its kindergarten, first, second and third grades; and that Bellhaven abolish its fourth, fifth and sixth grades. The object is to place 520 blacks and 280 whites in each school.

The principal of Bellhaven, who happened to be telling me all this, is a plump fellow in his early 50s; his face looks as if all the happiness had been squeezed out. He has spent the past six weeks, since the school year ended, in these educational endeavors: He has moved all his school furniture for fourth, fifth and sixth graders to Hyde Park, and he has received like shipments in return. He has worked with his librarian in purging the Bellhaven shelves of 2,200 books beyond the third-grade level and is swapping these with the Hyde Park collection for tiny tots.

Mostly he has been on the phone with parents. His opposite number, 11 miles across town, has been equally engaged. Infuriated black parents are threatening violence and boycott. Outraged white parents have filed 230 requests for pupil records as a preliminary to placing their children in private schools. The principal of Bellhaven at this moment has no idea "if I can produce my 280 whites." He won't know until Sept. 7.

I do not identify the city or the principal; educators have been warned they may be in contempt of court if they publicly criticize busing. Those are not the true names of the two schools. But the story is absolutely true. It is entirely typical. Down in Austin, Tex., the government has been demanding imposition of a plan that would give each school the same ethnic mix of the city at large—64.5 percent white, 20.4 percent Chicano, and 15.1 percent black. This is education? No. This is madness.

S.J. RES. 112

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this Joint Resolution:

"ARTICLE —

"SECTION 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"SEC. 2. The Congress shall have the power to enforce this article by appropriate legislation."

LEASEHOLDER'S PLAN MERITS SERIOUS STUDY

Mr. HANSEN. Mr. President, the United States is fast becoming an energy deficient nation and overly dependent on foreign sources for oil.

Apparently few people realize that we are now importing more than one-fourth of U.S. needs, some 3½ million barrels a day of crude oil, residual and other refined or partly refined products.

Nor do many realize that we no longer have the excess producing capacity in the United States including all offshore production to make up the difference in demand and supply should any substantial amount of oil imports be cut off as it well could be.

The country faced an energy crisis last winter during a tanker shortage and disruption of oil supplies from the Middle East and north Africa. A crisis was prevented by concerted Government and industry action and the fact is that we still have excess producing capacity but not enough to match any substantial cutback in imports.

One of the oil deficient areas is the state of California. The west coast area must import considerable oil from Canada and other sources to meet its needs.

One of the most important sources of the west coast oil supply is from offshore including the Santa Barbara Channel.

Since the unfortunate 1969 blowout of a platform well in the channel, numerous studies have been made, congressional hearings have been held; the consensus now is that further drilling is necessary to relieve the pressure on oil seeps in the area that were flowing long before any wells were drilled from the offshore platforms.

The U.S. Geological Survey has, in fact, recommended drilling from other platforms as the only feasible means of recovering the oil and gas from the formation. Obviously, there is an urgent need for the oil and certainly the hazards of oil pollution from additional platforms are no worse than the hazards of spills from tanker accidents. The needed oil must come from one source or the other and a major tanker disaster can cause more damage to beaches and wildlife than did the Santa Barbara blowout.

I realize, Mr. President, that any oil spill from whatever source is a disaster of some proportion for those affected—the residents of the area and bird and marine life.

The U.S. Geological Survey environmental statement said in fact, that an oil spill could cause short-term damage to beaches and wildlife and that long-term or permanent effects of major oil spills are still unknown.

However, recent testimony before a Department of Interior environmental hearing by marine biologists indicates that nature recovers quickly from oil spills.

In a hearing held at New Orleans under the Government's requirement that an environmental hearing precede any future planned sale of offshore oil leases, two marine biologists testified that nature returned to normal within a year after widely publicized oil spills in the Gulf of Mexico and California's Santa Barbara Channel.

All forms of life including birds and barnacles showed good recovery 7 to 10 months after the spill, Dale Straughan, assistant professor of biological science at the University of California, told the hearing. She headed the study of the spill by the university's Allan Hancock Foundation.

The fire and oil spill off the Louisiana coast last year did not cause any detectable damage to birds, fish, and oysters or to microscopic life outside a three-quarter mile radius of the platform, according to John G. Mackin, professor of biology at Texas A. & M. University. He told the hearing that microscopic life close to the platform showed full recovery a year later.

I understand that Professor Mackin has been studying the gulf's ecology since 1947 and carried out extensive studies of the gulf oil spill.

Mr. President, offshore oil and gas deposits offer one of the best hopes of the short-term solution to our growing energy shortage and at risks far less than the pollution from tanker disasters.

In connection with the instance of the current controversy over approval of an additional platform designated as platform C in the Santa Barbara Channel, I ask unanimous consent that points submitted by the applicant and leaseholder, which seem to me to merit serious, objective consideration, be printed in the RECORD.

Also, I ask unanimous consent that an article from today's issue of the Oil Daily be printed in the RECORD.

The article entitled "District V: A Depressed Area for Drillers," emphasizes the need for exploration and development of new sources of oil for California, a State becoming increasingly dependent upon foreign oil.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

POINTS IN SUPPORT OF SETTING PLATFORM C, SANTA BARBARA CHANNEL

1. Sanctity of Contract: The oil and gas lease clearly grants to the lessee the right to set platforms and other structures on the leased land. This lease was issued in accordance with the Outer Continental Shelf Lands Act and the lessees paid to the Federal Government the sum of $61,418,000 as consideration for the leases. All legal prerequisites to the setting of the platform have been complied with approval by the Regional Supervisor and the issuance of an appropriate permit by the Corps of Engineers.

2. Governmental—Expert Studies and Recommendations: (a) The DuBridge Panel.

On May 27, 1969 the special scientific panel at the direction of the President made its report which recommended, among other things, the removal of the oil and recommended: "The Panel is of the opinion that withdrawal of the oil from the Repetto Zone is a necessary part of any plan to stop the oil seep and to insure against reoccurrence of oil seeps on the crest of the structure."

To implement the recommendations of the DuBridge Panel, the setting of Platform C is necessary.

(b) A Special Environmental Advisory Board of the City of Santa Barbara in March 1970 recommended the fullest, practical depletion of the reservoir. These recommendations were approved by the City of Santa Barbara on March 17, 1970.

(c) The Department of the Interior on August 27, 1971, after public hearings and exhaustive study also recognized the necessity and desirability of setting Platform C.

3. Navigation and Fisheries: All of the evidence indicates that the fisheries are unaffected or even perhaps even enhanced by the constructiton of platforms. The proposed platform is out of the shipping lanes and the majority of fishermen and mariners presenting testimony stated that platforms were an aid to navigation rather than a hazard. These points were covered in the Impact Statement.

4. Aesthetics: As is stated in the Impact Statement "Many people believe that the platforms will decrease the value of the Santa Barbara Channel Region as a tourist and retirement area. Others, however, find the lights across the waters attractive at night, and welcome the platform as sport fishing reefs, or as an aid to navigation for pleasure boating." Thus, the question of aesthetics is a matter of opinion. It should be noted that the platform are at least five miles from the shore, and in the Santa Barbara Channel this means that they are not visible at least half the time. The prevailing weather conditions during the "tourist season" generally shroud the platforms with fog.

5. The West Coast: It is well known that the West Coast is energy deficient and the curtailing of this potential production from Platform C will require the importation of fuel, thus adversely affecting the balance of payments.

6. Employment: The records of the public hearings reflect that a vast number of people in the Santa Barbara-Ventura area are dependent upon the offshore oil industry for their livelihood. The continued curtailment of this industry will cause addititonal unemployment of a significant magnitude.

7. International Ramifications: If the Federal Government ignores its contractual commitments under the lease, it will have a very poor standing to point its finger at foreign governments who similarly cancel or nullify contractual commitments.

BILL GREGG'S WEST COAST REPORT—DISTRICT V: A DEPRESSED AREA FOR DRILLERS

LOS ANGELES.—Delegates attending the annual meeting of the American Association of Oilwell Drilling Contractors which opens here Tuesday will be convening in a state which so far as their segment of the industry is concerned appears to hold the dubious distinction of currently being one of the nation's most depressed.

California drilling activity has been sharply curtailed to the point where ranks of active onshore drilling contractors have been thinned to a mere 25 (half the number operating here 10 years ago) while active onshore rigs have been reduced to approximately 40 from 110 a decade ago.

Offshore drilling has been stymied by state and federal orders. Washington has held to its ban on drilling operations on all but three Santa Barbara Channel Outer Continental Shelf leases and the state lands commission has maintained its prohibition on new drilling (save for a couple of reluctant exceptions) on state tide and submerged lands leases.

Unfortunately, the only real prospects of finding and producing significant new reserves here lie offshore. Most California majors and independents are tending to discount the state's onshore petroleum potential—at least for any really significant upland field or pool discoveries.

As The Oil Daily reported in July there have been many contractions and "consolidations" of local exploration staffs by major oil companies operating in California, and a number of majors have been quietly selling off some of their small leased tracts in California where production lately hasn't been too great.

California's crude oil production, which reached a record peak early last year, has been on an overall downtrend since then—a trend which is expected to continue until Washington decides to permit drilling of

wells on more Santa Barbara Channel leases or, as an alternative, opens up to Elk Hills Naval Petroleum Reserve.

Meantime, there's been no homeless domestic California crude available for a long time, nor is there apt to be in the immediate future.

This situation is, of course, making California increasingly dependent upon imports and upon the vagaries of small Middle East, African and Asian nations whose rulers are fully aware of their new found powers over the economic destinies of the free world.

Import tickets held by small California refiners—valueless seven months ago—have gained some value now that spot charter rates for tankers have declined (last week these rates reportedly ranged between world 30 and world 45 for shipments of Persian Gulf crude to the West Coast).

One hears these tickets are now worth between 50 and 60 cents on a per barrel basis, but also that while District V majors are willing to exchange foreign crude brought here under these tickets for domestic crude, small inland refiners have not been able to secure the low gravity California crudes they need under these deals.

Low, current spot charter rates have, incidentally, brought the delivered, duty-paid cost of Persian Gulf light gravity crudes below posted prices of comparable California crudes—at least for the time being.

This situation is not expected to long prevail. Expectations are that by the last quarter spot tanker rates will begin to climb, since by that time the world currency situation should have stabilized—while crude inventories of European nations and Japan will need replenishing.

MILITARY CARGO TEST PROGRAM SHOULD BE REINSTITUTED

Mr. PROXMIRE. Mr. President, back in 1969, the Defense Department instituted a test program involving the shipment of U.S. military cargo which originated in the Great Lakes region. In the past, this cargo had always been routed overland by rail to east coast ports, where it was then loaded onto American-flag vessels for shipment overseas. The purpose of the 1969 test was to determine whether cost savings could result by loading the cargo on ships at nearby Great Lakes ports and using the St. Lawrence Seaway for routing overseas.

At the end of the 1969 shipping season, the Pentagon announced that it had lost $415,000 on the program.

Those of us who were familiar with Great Lakes shipping found this very difficult to believe. It is inherently more expensive to use rail service instead of water transportation for any part of the voyage. Shipping via the east coast means using rail transportation for the first 1,000-plus miles of the voyage—clearly a very inefficient means of carriage. In addition, shipping via the east coast makes for a substantially longer trip, particularly where northern Europe is the destination.

The following table of distance makes this clear:

From/To	Direct all water routing (miles)	Rail+ship via port of Baltimore (miles)
Detroit to Copenhagen	3,937	4,763
Detroit to Hamburg	3,725	4,551
Detrot to Leghorn, Italy	4,590	4,968

Although I have used Detroit in these examples, the results would be comparable for any port located on the Great Lakes.

Accordingly, I asked the General Accounting Office to make an independent study of this test program and its costs. In particular, I wanted the GAO to determine whether better management, or a different mix of cargo, might have affected the outcome. Last week the GAO made its report to Congress.

GAO's conclusions: on the basis of reported data, the excess cost of the test was $61,000—not the $415,000 as DOD announced. More significantly, GAO found that improved management could have further affected the test results. In other words, there is every reason to expect that with improved administration, such a program should be cost favorable to the Government.

Here are a few of the errors and examples of poor management cited by GAO:

DOD failed to route some 12,700 tons of cargo, mostly household goods, to the test ships even though the cargo originated at or was destined to the States for which the Great Lakes ports are cost favorable.

There was probably even more cargo in this category, but GAO was unable to identify such cargo because the shipping records of DOD were inaccurate or incomplete.

Two elements of the cost of shipping via tidal ports—indirect administrative charges and the cost of preparing vehicles for shipment—were not included by DOD, although DOD did include such items in considering Great Lakes costs.

Retrograde cargo was available which could have been used to fill ships on return voyages. GAO identified at least 1800 tons in this category which would have been cost favorable for Great Lakes ports.

GAO also identified more than 32,000 tons of outbound general cargo that originated in the Great Lakes area during the test period. DOD argues that less than 1,000 tons of this could have been included in the program, but GAO states that because of the time elapsed since the routing decisions were made it cannot evaluate DOD's justification for its failure to ship this cargo via Great Lakes ports.

Finally, GAO's attempts to identify additional shipments, that potentially would have been cost favorable via the Great Lakes, "were frustrated by the incomplete and inadequate shipping records of the military services."

Mr. President, in light of the GAO's findings, it is quite clear that the 1969 test program was never really given a chance to succeed. I think it is also clear that with improved management, and greater commitment on the part of those in charge, this program will prove its worth in no time at all.

Mr. President, I have today written to Defense Secretary Melvin Laird asking him to reinstitute the Great Lakes military cargo program for the 1972 shipping season. Once this program proves its worth, as I am confident it will, the chances are excellent that we will get regular American-flag service in the Great Lakes competing for the opportunity to carry this cargo. This will result in substantial savings to the Federal Government.

Mr. President, I ask unanimous consent that the GAO report dated September 7, 1971, and my letter to Secretary Laird dated September 17, 1971, be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D.C., September 17, 1971.

Hon. MELVIN LAIRD,
Secretary, Department of Defense,
Washington, D.C.

DEAR MR. SECRETARY: In 1969, as you will recall, the Defense Department conducted a test involving the shipment of military cargo via the Great Lakes and the St. Lawrence Seaway. The cargo was tonnage that had originated from (or was destined to) those states having access to Great Lakes ports, and was carried by ships under charter to the military.

At the conclusion of the study, the Department reported a loss of $415,000 on the program.

The General Accounting Office has just completed its own review of the military cargo test program, and has arrived at a different conclusion. GAO found that on the basis of data reported to it, the losses should have been only $61,000. And more important, GAO concludes that "improved management could have further affected the test results."

For example, GAO identified some 12,700 tons of cargo—household goods—which should have been routed to the test ships and which would have been cost favorable if shipped via Great Lakes ports. GAO also identified another 32,300 tons of general cargo which originated in the Great Lakes area, and which might have been eligible for shipment via the Seaway. In addition, GAO cites numerous instances in which inadequate record-keeping made it impossible to determine whether still more cargo might have been available for the test program.

It's clear to me that the 1969 test program was never really given a chance to succeed. With improved management, and greater commitment on the part of those in charge, I'm confident that this program can rapidly prove its worth.

I strongly urge that the Department reinstitute the Great Lakes military cargo program for the shipping season in 1972. Once this program proves its worth, the chances are excellent that regular American-flag service will compete in the Lakes for the opportunity to handle this cargo. And the resultant savings to the federal government should be substantial.

I am enclosing a copy of the GAO report on Great Lakes shipping, which goes into this in considerable detail. I hope to hear from you on this at your earliest opportunity.

Sincerely,

WILLIAM PROXMIRE,
U.S. Senate, Chairman, Great Lakes Conference of Senators.

TEST RESULTS INCONCLUSIVE FOR DETERMINING ECONOMICS OF USING GREAT LAKES INSTEAD OF TIDAL PORTS FOR SHIPPING MILITARY CARGO

(By the Comptroller General of the United States)

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C.

Hon. WILLIAM PROXMIRE,
U.S. Senate.

DEAR SENATOR PROXMIRE: This is our report on our evaluation of a test made by the Department of Defense involving the use of Great Lakes ports for military cargo

moving between the United States and Europe.

Our evaluation was pursuant to requests received from you and from other interested members of Congress.

This report is being sent today to these members.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States.

COMPTROLLER GENERAL'S REPORT

WHY THE REVIEW WAS MADE

In 1969 the Department of Defense (DOD) decided to conduct a test using Great Lakes ports for military cargo moving between the United States and Europe. By using the lake ports DOD reasoned that it could decrease substantially cost involved in moving similar cargo overland to more distant tidal ports. (See p. 3.)

Announcement of the proposal resulted in congressional requests that the General Accounting Office (GAO) halt the test or postpone it until a determination could be made regarding the need for the test. (See p. 3.) GAO advised that the data necessary to determine the feasibility of using Great Lakes ports was not available and that it had no basis for recommending cancellation of the test.

GAO did agree, however, to monitor the test and evaluate its results. (See p. 4.)

GAO discussed its findings with DOD, but DOD was not asked to comment on the draft of this report. (See p. 14.)

FINDINGS AND CONCLUSIONS

The test was made during the period April through November 1969. Two Victory-type ships chartered by the Military Sealift Command were used. DOD reported that it cost $415,000 more to ship the test cargo through Great Lakes ports than via tidal ports. (See p. 4.)

DOD indicated that poor cargo mix was a factor in making the use of Great Lakes ports uneconomical. However, since the test ships sailed with considerable unused space on most of the outbound voyages and all of the inbound voyages, the mix of cargo was of minor importance. (See pp. 4 and 8.)

GAO, however, believes that the test results were inconclusive and not a valid basis for determining the relative economies of Great Lakes versus tidal ports (See p. 6.)

There were errors in the cost data used by DOD to evaluate the test, and areas were identified where improved management could have significantly changed the results. These and other considerations reduced the excess costs reported by DOD from $415,00 to about $61,000. (See pp. 6 and 7.)

Although GAO identified some additional cargo that should have been shipped on the test ships, it was unable to identify all such cargo because of inadequacies in DOD's management information system and the incomplete shipping records maintained by DOD. (See p. 8.)

In view of the relatively small adjusted cost difference identified during the test—about $61,000 or about 2 percent of the total program cost of $2.8 million—and in view of the possibility that better management could have further influenced the test results, GAO is not able to reach a conclusion regarding the economies of using Great Lakes instead of tidal ports. (See pp. 6 and 14.)

Chapter 1—Introduction

Prior to 1969, military cargo originating in the Great Lakes area and destined for overseas locations had been routed overland to tidal ports because there was no regular ocean service by U.S.-flag ships from nearby Great Lakes ports. In DOD's opinion, the use of this relatively high-cost overland transportation to more distant tidal ports unnecessarily increased its transportation costs.

Therefore, in October 1968, DOD requested our views concerning the propriety of using other than U.S.-flag ships for shipping military cargo through the Great Lakes ports. In reply (B–165421, dated December 23, 1968), we concluded that the diversion of military cargo from U.S.-flag ships at tidal ports to foreign ships at Great Lakes ports would be illegal. We pointed out, however, that it would not constitute a violation of the cargo preference act relating to the transportation of military supplies by sea as enacted April 28, 1904 (10 U.S.C. 2631), if ships controlled or owned by the Military Sealift Command (MSC) were used. We advised DOD that the use of such ships would not seem to deprive privately owned U.S.-flag ships of cargo because, in effect, the MSC ships would merely operate from Great Lakes ports instead of tidal ports.

Subsequently, DOD decided to test the use of MSC-controlled shipping between the Great Lakes and Europe during the 1969 shipping season. Announcement of the test resulted in congressional requests that we halt the test or at least postpone it until such time as a determination could be made regarding the need for such a test. Opponents of the test contended that sufficient cost data was available to determine the feasibility of using Great Lakes ports. They further believed that this cost data would show that the use of the lakes would result in excess costs to the Government.

We examined the matter and determined that the necessary cost data was not available within DOD. We then advised those concerned that there was no basis for recommending that the test be canceled. But we agreed to monitor the test and evaluate its results.

In March 1969 DOD established guidelines for the test. The guidelines provided that all cost-favorable cargo suitable for inclusion in the test be routed to selected Great Lakes ports with the further stipulation that the Military Traffic Management and Terminal Service (MTMTS) take steps to ensure the success of the test. These steps were to include actively seeking reduced overland transportation rates to the ports and more favorable port handling conditions and rates. MTMTS was also to check shippers to ensure that cargo was being routed to the test ships. DOD directed that serious consideration be given to including shipments of household goods and privately owned vehicles in the test program.

The test was made during the period April through November 1969 using two Victory-type ships already operating under charter to MSC. There were a total of 11 sailings outbound from the ports of Milwaukee and Kenosha, Wisconsin; Toledo, Ohio; and Port Huron, Michigan, to Bremerhaven, Germany, and Rotterdam, Netherlands. All except the last two sailings were on a round-trip basis. The Great Lakes ports involved in the test are shown on the map on page 9.

On April 2, 1970, the Office of the Assistant Secretary of Defense (Installations and Logistics) reported to interested members of Congress that 68,631 measurement tons of cargo had been transported on the test ships and that it cost about $415,000 more to ship the cargo through the Great Lakes ports than it would have cost through tidal ports.

The Assistant Secretary of Defense reported that the primary factor causing increased costs through Great Lakes ports was the inability to generate sufficient general cargo to effectively utilize the space on the test ships. Of the total cargo shipped on the test ships, 66 percent was military vehicles. The Assistant Secretary reported that vehicles were difficult to stow efficiently on conventional ships and that, if a greater proportion of the cargo had been general cargo, ship utilization would have been improved and thus would have permitted larger payloads and lower unit costs. In addition, the Assistant Secretary stated that direction of more inbound cargo to the test ships would have reduced the excess cost of using the Great Lakes ports.

Initially, DOD established an outbound ship utilization goal of 7,300 measurement tons (M/Ts) and inbound goal of 730/Ts. Considering the cargo capacity of the ships involved and the past volume of military traffic inbound from Northern Europe, we believe that DOD's goals were reasonable.

An analysis of ship utilization records showed, however, that these goals were achieved only on one outbound voyage and two inbound voyages. The average tonnage carried was 5,929 M/Ts on outbound voyages and 310 M/Ts on inbound voyages.

DOD officials concluded that the operation of controlled ships in the Great Lakes was uneconomical because of the mix of cargo and the lack of retrograde traffic. They expressed the opinion, however, that commercial U.S.-flag operators could improve substantially upon DOD's experience by carrying additional general cargo outbound and by attracting inbound nonmilitary cargo.

On the basis of our preliminary evaluation of the test results and the cost data then available, we reported to several members of Congress that we agreed with DOD's estimate of excess cost on the shipments made through the Great Lakes. We also reported, however, that we had identified cargo which had not been routed via the test ships even though routing via the Great Lakes appeared cost favorable. We reported that we planned, as a part of our overall evaluation of the test, to carefully review records relating to this cargo.

Chapter 2—Test results inconclusive for determining feasibility of using Great Lakes ports

We believe that the test results were inconclusive and cannot be used as a basis for determining the relative economies of using Great Lakes and tidal ports. We found errors in the cost data used by DOD to evaluate the test results, and we identified areas where improved management could have, significantly changed the outcome of the test. An adjustment of the test results to reflect our findings reduced the excess cost reported by DOD from $415,000 to about $61,000. A table showing our various adjustments to the cost of the test is included as an appendix to this report.

Further, although we identified some additional cargo that should have been included in the test, we were unable to identify all such cargo because of inadequacies in DOD's management information system and the incomplete shipping records retained in the DOD system. The nonavailability of adequate shipping information was the major factor in frustrating a conclusive evaluation of the test result.

In view of the relatively small adjusted cost difference—about $61,000 or about 2 percent of the total program cost of $2.8 million—and in view of the possibility that better management would have further affected the results of the test, we cannot draw any conclusions regarding the relative economies of using Great Lakes ports rather than tidal ports for cargo to and from locations near the Great Lakes.

Our findings are discussed in detail in the following sections.

DOD'S ESTIMATE OF EXCESS COST INACCURATE

On the basis of our preliminary analysis of the test results, DOD's estimated excess cost of $415,000 seemed reasonable. During our detailed examination of the cost data, however, we identified several errors in the estimate.

We found that other than cost-favorable cargo had been routed to the Great Lakes to achieve better utilization of the test ships. For example, cargo was routed from Texas to the Great Lakes to effect use of otherwise unused space on the test ships even though the gulf ports would normally be cost favorable. Such diversions distorted the results of the test because under normal operating conditions this cargo would not have been routed to the Great Lakes. Elimination of

these shipments, which we estimate to have been about 3,700 M/Ts, would have resulted in a net cost increase of about $36,000 in the test results as reported by DOD.

Another error involved Army and Air Force Exchange Service cargo which was included in the test program. Since the overland cost for this particular cargo (4,462 M/Ts) was paid by the Exchange Service, the $10,000 savings in lower overland costs to the nearer Great Lakes ports should not have been used to reduce DOD's overall excess cost.

On the other hand, we found that two elements of the cost of shipping by tidal ports were not considered by DOD in its final evaluation although they were included in the cost of shipping by Great Lakes ports. These elements were indirect administrative charges incurred at the port terminals (about $44,000) and the cost of preparing vehicles for overseas shipment (approximately $20,000).

IMPROVED MANAGEMENT WOULD HAVE RESULTED IN ADDITIONAL TEST CARGO

An area where improved management could have influenced the test results involves the omission of cost-favorable cargo from the test program. The test ships sailed with considerable unused space on most of the outbound sailings and on all of the inbound sailings. This indicates that the poor cargo mix reported by DOD as a reason for the use of the Great Lakes being uneconomical was of only minor importance. As long as there was significant unused space on the test ships the cargo mix would have had little effect on the overall results of the test. Only if the ships had been loaded close to capacity would a better mix of cargo—such as the use of general cargo to replace military vehicles—been of substantial benefit.

Of prime importance to proper conduct of the test was the routing of all appropriate cargo to the test ships. We found that this was not done. For example, DOD did not route 12,719 M/Ts of cargo—principally household goods—to the test ships even though the cargo originated at or was destined to the 13 States that we considered to be rate favorable to the Great Lakes ports. (See map on p. 9.) Inclusion of this additional cost-favorable cargo would have reduced the excess cost of the test to about $61,000 after adjusting for the inaccuracies mentioned earlier. (See appendix.)

Although we believe, as explained later, that even more cargo could have been diverted to the test program, we were unable to identify such cargo because the shipping records of DOD were inaccurate or incomplete. We are currently involved in an overall review of the adequacy of the management information systems used by DOD's transportation activities.

SIGNIFICANT VOLUME OF HOUSEHOLD GOODS OMITTED FROM TEST PROGRAM

DOD did not give proper consideration to including household goods in the test program, and as a result a significant volume was omitted from the test. Our analysis of the tonnage carried on the test ships showed that only 1,597 M/Ts of household goods were shipped via the Great Lakes. Our review of household-goods shipments between points in the Great Lakes area and Germany showed that at least an additional 10,275 M/Ts should have been included in the test program.

In a memorandum dated March 27, 1969, the Deputy Assistant Secretary of Defense (Supply and Services) directed that serious consideration be given to including shipments of household goods in the test program. It was not until May 20, 1969, however, that MTMTS advised responsible transportation officers to consider shipping household goods in the program. Even then, MTMTS merely encouraged the transportation officers to use the Great Lakes ports.

Generally there are two methods available to transportation officers for moving household goods overseas. The first method is the through-Government-bill-of-lading method whereby a single bill of lading is issued to a forwarder to cover all the necessary services from origin to destination. Under this method, if the Government provides the ocean transportation, the forwarder offers a reduced rate. The second method is direct procurement whereby the Government manages the shipment and makes separate arrangements for the various services required, which are packing, movement to the port, port handling, ocean transportation, movement to destination, and unpacking.

Because the ships used in the test were chartered by the Government and the use of otherwise unused space was, in essence "free," we believe that all shipments between the Great Lakes area and Europe should have been evaluated for movement via the Great Lakes.

We estimate that inclusion of through-bill shipments alone would have added 10,275 M/Ts of cargo to the test program. We limited our evaluation of household-goods shipments to those moved under the through-bill method because DOD's records relating to direct procurement shipments were inadequate to identify the specific origins and destinations involved. We found, however, that MSC statistical data showed that it carried 70,158 M/Ts of household-goods shipments to Northern Europe (principally Germany) and 136,094 M/Ts inbound from the same area during the first 9 months of calendar year 1969. Although a portion of this tonnage involved through-bill shipments, the majority moved under the direct procurement method. The statistics did not identify the specific U.S. points involved; however, in our opinion, some of this tonnage would involve direct procurement traffic to and from the 13 States in the proximity of the Great Lakes.

In support of our opinion, we found that about 19 percent of the through-bill traffic moving during the test period involved the 13 Great Lakes States. The significance of this percentage is demonstrated when it is realized that diversion of only 2 percent of the 206,000 tons of direct procurement household-goods shipments to the test ships would have resulted in additional savings of about $104,000.

OTHER CARGO OMITTED FROM TEST PROGRAM

DOD reported that only about 3,400 M/Ts of cargo had been returned to CONUS on the test ships and that the ships had returned to CONUS empty on four of the nine round-trip voyages. In an effort to identify additional cargo which might have been handled by the test ships, we requested DOD on June 11, 1970, to furnish us with a record of all retrograde cargo movements during the test period. The requested data was furnished to us by DOD on October 8, 1970.

From this data we identified 1,826 M/Ts of retrograde general cargo which, we believe, should have been included in the test program. The DOD listing showed a total of 44,528 M/Ts of retrograde cargo which moved through tidal ports during the test period; however, we considered as potentially cost-favorable cargo only the 1,826 M/Ts destined to the 13 States in the proximity of the Great Lakes ports used in the test.

Also, from data furnished to us by DOD, we identified 32,335 M/Ts of outbound general cargo shipments (excluding ammunition and vehicles) which were routed via the east or gulf coast ports even though the shipments originated in the Great Lakes area. A review by DOD of these cargo movements showed that only 618 M/Ts could have been included in the test program. DOD explained that about 66 percent of the identified cargo was containerized either at origin or at the port, and since no container service was available via the Great Lakes, the cargo was routed via tidal ports. Other reasons given by DOD for shipping the cargo via tidal ports were:

The high priority of the cargo and the required delivery dates precluded use of the test ships.

Cargo shipped on commercial bills of lading was procured on a free-on-board-port basis, with an east or gulf coast port designated as the port of exit. Diversion of shipment to another port would have required an amendment to the procurement contract.

Because of the length of time that had elapsed since the decision was made by the various transportation officers to use a particular mode of transportation or to use expedited service, we could not evaluate the validity of these reasons.

ATTEMPTS TO IDENTIFY ADDITIONAL CARGO FRUSTRATED BY INADEQUATE RECORDS

Our attempts to identify additional shipments, potentially cost favorable via the Great Lakes, were frustrated by the incomplete and inadequate shipping records of the military services. For example, records furnished to us by MTMTS showed that the total tonnage of through-bill household-goods movements for the 5-month period May through September 1969 between Germany and 10 selected Great Lakes States was 6,286 M/Ts inbound and 1,967 M/Ts outbound. To test the validity of these figures, we surveyed actual payments made to household-goods forwarders during this period. On the basis of this survey, we estimate that more than twice as many shipments of household goods actually moved to or from the Great Lakes area than were reported by MTMTS for the test period.

MTMTS records show that approximately 26,000 M/Ts of household goods moved through east or gulf coast parts under the direct procurement method from Germany to all destinations in CONUS during the period April through September 1969. Military Sealift Command records for the same period, however, showed that 90,000 M/Ts of household goods were moved from Northern Europe, principally Germany, to all States in CONUS. Our review of payment records showed that MSC carried about 12,000 M/Ts for through-bill carriers. If MSC records are correct, the remaining 78,000 M/Ts were direct procurement shipments. This differs significantly from the 26,000 M/Ts reported by MTMTS.

Statistical data involving general cargo shipments, both outbound and retrograde, also varied significantly when comparing that furnished to us by MTMTS, MSC, and the U.S. Army, Europe. Records of MSC showed that 730,436 M/Ts moved to Northern Europe from all States in CONUS for the period January through September 1969, whereas MTMTS records for the same period indicated that only 487,265 M/Ts were shipped.

With regard to retrograde cargo, records furnished to us by the U.S. Army, Europe, showed that a total of 43,170 M/Ts were shipped during the period January through September 1969; whereas MSC records showed a total of 167,138 M/Ts for the period January through September 1969.

Although it was difficult to determine which records were unreliable, we were able to determine the inaccuracy, to some degree, of the statistical data furnished to us by MTMTS that involved outbound general cargo. We compared this data with the ships' manifests for the 11 sailings during the test program and found that about 20 percent of the tonnage onloaded was not recorded in the MTMTS statistical data. This same data showed about 5,000 M/Ts as having moved on the test ships when, in fact, the tonnage actually moved via tidal ports. Only 22 percent of the cargo manifests that we examined were recorded correctly in the statistical data.

We have discussed our findings with DOD officials, but they were not asked to comment on the draft of this report.

CONCLUSIONS

Because of the relatively small cost difference identified during the test and the possibility that improved management could

have further affected the test results, we cannot draw any conclusions regarding the relative economies of using Great Lakes ports as opposed to using tidal ports. The test results, in our opinion, were inconclusive.

Chapter 3—Scope of review

Our review included an examination of pertinent test records; an analysis of data relating to the movement of general cargo, household goods, and retrograde cargo between CONUS and Germany during the period April through October 1969; and discussions with responsible transportation officials.

Our review work was done at the following locations:

Headquarters, Military Traffic Management and Terminal Service, Fall Church, Virginia.

Headquarters, Eastern Area Military Traffic Management and Terminal Service, Brooklyn, New York.

Port of Toledo, Toledo, Ohio.

Port of Milwaukee, Milwaukee, Wisconsin.

APPENDIX I.—ADJUSTMENTS TO THE DOD REPORTED COST OF THE GREAT LAKES TEST

	Actual cost of test	Estimated cost via Atlantic or gulf port	Excess cost or decrease (—)
DOD report	$2,821,000	$2,406,000	$415,000
Exclusion of cargo not cost favorable (p. 7):			
Ocean		—76,000	
Port handling	—19,000	—21,000	
Overland	—72,000	—30,000	
Total	—91,000	—127,000	36,000
	2,730,000	2,279,000	451,000
Exclusion of overland costs of Army and Air Force: Exchange service cargo (p. 7)	—$23,000	—$33,000	$10,000
	2,707,000	2,246,000	461,000
Inclusion of cost elements not considered by DOD (p. 7):			
Indirect terminal charges		44,000	
Vehicle processing		20,000	
Total		64,000	—64,000
	2,707,000	2,310,000	397,000
Inclusion of candidate household goods shipments (p. 8)	824,000	1,090,000	—266,000
	3,531,000	3,400,000	131,000
Inclusion of candidate retrograde cargo (p. 12)	25,000	78,000	—53,000
	3,556,000	3,478,000	78,000
Inclusion of candidate outbound general cargo (p. 12)	13,000	30,000	—17,000
Adjusted cost comparison	3,569,000	3,508,000	61,000

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States submitting a nomination was communicated to the Senate by Mr. Leonard, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the President pro tempore laid before the Senate a message from the President of the United States submitting the nomination of Romana Acosta Banuelos, of California, to be Treasurer of the United States, which was referred to the Committee on Finance.

MESSAGE FROM THE HOUSE—ENROLLED BILL SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled bill (H.R. 234) to amend title 18, United States Code, to prohibit the establishment of detention camps, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore.

QUORUM CALL

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

Mr. BYRD of West Virginia. Mr. President, is there further morning business?

The PRESIDENT pro tempore. Is there morning business? If not, morning business is concluded.

EXTENSION AND REVISION OF THE DRAFT ACT AND RELATED LAWS—CONFERENCE REPORT

The PRESIDENT pro tempore. In accordance with the previous order, the Chair lays before the Senate the pending business, the conference report on H.R. 6531, the extension of the Military Selective Service Act, which the clerk will report.

The second assistant legislative clerk read as follows:

Report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6531) to amend the Military Selective Service Act of 1967; to increase military pay; to authorize military active duty strengths for fiscal year 1972; and for other purposes.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STENNIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GAMBRELL). Without objection, it is so ordered.

Mr. STENNIS. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the conference report on H.R. 6531, extension of the Military Selective Service Act.

PRIVILEGE OF THE FLOOR

Mr. STENNIS. Mr. President, in connection with the further presentation of this conference report, there is one member of the staff of the Armed Services Committee that I feel should have access to the floor, and that is Mr. LaBre Garcia. I have conferred with the Senator from West Virginia (Mr. BYRD) on this, and I ask unanimous consent that Mr. Garcia, who is a member of the staff of the committee, be admitted to the floor during the debate on the conference report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STENNIS. Mr. President, I do not have any extended remarks to make this morning with reference to the pending matter. I propose to review briefly what has transpired on this bill so far, and I have some additional material—we have been gathering it as fast as we could—with reference to the impact on the military services regarding personnel during that period in which we have had no law that permitted the President to make inductions into the services.

I shall put those items in the RECORD later.

As I have stated, Mr. President, I signed and filed the cloture motion on this matter last Friday after the vote solely as a matter of necessity in the protection of our national security, because I have been so overwhelmingly convinced that if we fail to have a law on the books with reference to the power of the President to induct men into the services, we would rapidly experience a decline in our capability to man our many-faceted, many-sided, worldwide military programs. I was convinced that the Army, Navy, Air Force, and Marine Corps would deteriorate so far as our home defenses are concerned. I was convinced that the 2½ months that have transpired since that law expired, from figures shown last week, have abundantly proved that that decline has already started; and in the opinion of those most qualified to give an estimate on the subject, it shows that, within 6 months, decline in personnel with ability to man our weapons would seriously impair our ability to function.

I am not rushing anyone to move in and vote for cloture tomorrow, but I respectfully submit that there has been ample time to debate this bill, and the opposition to it has been very skillfully and fully presented. I think we are faced with a proposition, now, that no draft law, at least for this 2-year interim period we are facing, would mean that we would not have proper security for our own people here at home, and I think it also means, under the present circumstances, "no draft bill, no foreign policy." I do not believe that the President of the United States would have any standing before adverse nations of the world if we do not have, at least to fill this interim period, a law that permits him to induct the right kind of men into the services to man our military forces. I believe that failure to pass this bill would be interpreted strongly by those nations that are not friendly to us as the beginning of the breakdown of the firm foreign policy that we have been following, and that if they would just push us enough and wait long enough, the head of our Nation, whoever he might, Mr. Nixon or anyone, would not be able to carry out a firm foreign policy. Mr. President, we do not want that to happen.

As to the bill itself, after a very favorable vote originally—and I do not have the exact vote now, but I shall get it—the measure now under debate passed the Senate, about the 24th or 25th day of

June, following 7 weeks of debate here on this floor, with only 16 votes registered against it. I think that reflects the sentiment and realization here that we must have a draft bill of some kind. True, it had in it at that time the full-fledged Mansfield amendment. It went on to a conference, and, let there be no argument, there was a very vigorous and complete presentation of the entire bill as passed by the Senate, including the Mansfield amendment, at that conference. I have shown before that we did not get all the Mansfield amendment agreed to by the conferees, but that we got a very substantial part, enough to have a meaning, and that is in this bill now. I shall come back to that in a few minutes.

Mr. President, referring again to that vote on final passage of the bill in the Senate on June 24, the yeas were 72 and the nays 16.

As I have stated, I assure everyone that there is a substantial part of the Mansfield amendment left in the bill that we have before us now. I think beyond doubt it as much as we could possibly have gotten. The Senator from Montana, the author of the amendment, said in debate very candidly—as he is always candid—last Wednesday, I think it was, that he agreed there was substance left in the Mansfield amendment as included in the present bill, that it was a step forward, that it had a meaning, and that except for the timetable, it had almost the full meaning of what was in the Mansfield amendment to begin with. And, Mr. President, it has this in addition: The only thing the Mansfield amendment could have represented as it passed the Senate was an expression of the Senate. But if we pass the bill as it is written now, it will be the expression of the Senate and the House of Representatives, and that makes a lot of difference. It makes it the sense of Congress that there should be as rapid and complete withdrawal from Vietnam as is practicable, and that that withdrawal should be tied only to the proposition of the surrender of our prisoners of war. Those were the two conditions that the Mansfield amendment had in it to begin with. Of course, the time then was specifically set at 9 months. But it is definitely a step forward, and this is round two in favor of the Mansfield amendment. It becomes now, if we can pass this bill, a declaration of Congress.

Then last Friday, after further thorough debate and consideration of the facts, in a direct vote on the conference report, because the motion was to table it, which would have killed it, there was a rather decisive vote, I believe, because of those who were recorded as present and voting and not paired, there was an 11-vote margin against tabling. That meant that a majority of 11 voted in favor of keeping the conference report alive. There could not be a vote at the same time on actually passing it, because the question was on agreeing to a motion to lay on the table the conference report, which would have meant that the bill in the report was killed for the time being and would have to go back through conference. But the Senate, after deliberation and with the facts before it, said, "No. No, we will not do that."

What is the implication of that "No"?

I submit that the implication, Mr. President, is twofold. The great majority of the Senators present and voting voted that this bill is no longer a proper vehicle for the Mansfield amendment in its original form. Many Senators who had voted for the amendment in its original form voted last Friday to keep this bill alive. In other words, they changed, not their sentiments, for that matter, but they changed their vote because they realized it had gone as far as it could go, riding this vehicle. That is very clear. Some of the speakers who had voted for the Mansfield amendment just rose and said so. And that is the direct implication of the vote of many others.

The other implication, which is much broader, is that the great majority of those voting here last Friday said, "We are not willing to kill the bill, because we have to have a draft law. The other matter can be settled in other channels and can come in through other doors—the total meaning of the Mansfield amendment. It is not killing it. It is just leaving the subject matter aside for the time being, except for what is in the bill. We must have a Draft Act, and we think it is time to proceed."

So it is under those conditions, Mr. President, that this motion for cloture is filed. We believe the Senate should vote for cloture tomorrow, which would be just another procedural step forward toward the passage of this bill. Tomorrow's vote will be a procedural step. Senators will not be bound as to how they will vote on final passage by how they vote tomorrow. It is merely saying that we have had enough debate, that we have an important matter here, and that it ought to be voted on up or down and either become law or not.

As the vote last Friday pertained primarily to the Mansfield amendment, whether we take it in its form in this bill or demand more in the form it was in in the beginning, so the vote tomorrow is purely on a question of procedure, as provided in the Rules of the Senate; and it is necessary when it is not by unanimous consent. That is a strange situation. We have 100 Members, and it takes unanimous consent to bring a bill of this sort to a vote unless there is the imposition of what we call the cloture rule.

I am aware of the fact that I have opposed cloture many times. But when a matter has progressed as far as this one has, cloture usually has been voted. I do not know when there has been any substantial cloture fight or any substantial opposition to the extent of having to go to cloture on a conference report—not in a long, long time, anyway. When a bill has found its way through all the channels and chambers of passage and has overcome every hazard and comes in on a conference report, we usually have a reasonable debate thereon and then vote it up or down.

I have already referred to the Mansfield amendment provisions in the bill, and I want to point out again that there has been no serious attack here on the contents of the bill. I think we brought back a very major part of the Senate amendments that the committee amended originally and that the Senate further amended on the floor; and we brought back a part of the Mansfield amendment, which covers the most controversial matter we have in Congress today—that is, the duration of the war in Vietnam.

I find no real, serious objection to the provisions in this bill. It is a greatly improved Selective Service Act, a draft bill. It contains some items to which I object. Almost every Senator objects to some items in it, I suppose. But, as a whole, the substantial part has been remedied—in part, at least, or remedied altogether—and the bill now stands before this body with tremendous improvement over the law that was in effect a year ago.

We have benefited by the experience. We have benefited by conferences with many Members here. We have benefited by a very illuminating and a very complete debate. We have had the benefit of the counsel of the conference committee in the House. The bill stands before us now without any serious objection as to its content.

I point out, too, Mr. President, that this is the conference committee version of a bill that we debated here last year. Actually, hearings started here at the beginning of February of this year. There were approximately 30 days of hearings. We had dozens and dozens of witnesses and organizations. There was all kinds of criticism of provisions in the old law. We had experts here. Also, the President had appointed a commission with reference to the so-called volunteer Army. All that was taken into consideration.

We spent 3 weeks at the conference committee table, writing up the bill, and filed a very comprehensive and complete report thereon. The bill was actively debated on the floor for 7 weeks, and there was very little willful delay in that debate. Most of the debate was right on the merits, on the major amendments, and there were many rollcall votes.

I believe we went to conference with 28 or 29 differences with the House bill, and we had approximately 60 or more rollcall votes in the Senate during the entire debate. Some amendments were rejected and never saw the breath of life beyond being espoused on the floor.

I mention those things again. There is no doubt that all Senators had an opportunity to express their views and to have their views considered by this body. As floor manager of the bill throughout the 7 weeks of debate, I did not make a motion to table a single amendment. Every Senator had a chance to debate it all he wished. At the end, in the rush of things, one amendment that a Senator considered repetitious of an amendment that had already been agreed to was the subject of a motion to table. That was not done through the manager of the bill, and it was a circumstance that was well justified; and there was a rollcall vote on the motion to table.

So no one has been pushed around; and no one has been hurried. I think we have taken up too much time, to be frank about it. But it is better that the system be preserved and that every Senator's rights be protected here. So if we are go-

ing to make error, let us make error on the side of deliberation, so that the rights of the States and the Senators are protected.

Mr. President, I do not feel called upon to debate this bill any further, except just to respond to the points that might be made, unless we find some additional facts. I referred last week to the fact that we were getting additional facts which happened after debate had closed in July—August at least. I have now, in more formal form, letters from the Secretary of Defense addressed to me as chairman of the committee, and one from the Chairman of the Joint Chiefs of Staff. These two letters are dated September 17, 1971, which was last Friday. I have another letter from the Department of the Army, from the Department of the Navy, and also a memorandum from the Department of the Air Force and a letter from the Marine Corps.

For such additional information as this may contain, for the benefit of all Senators, I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters and memorandums were ordered to be printed in the RECORD, as follows:

THE SECRETARY OF DEFENSE,
Washington, D.C., September 17, 1971.

Hon. JOHN C. STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As the President said in his press conference yesterday afternoon, immediate enactment of H.R. 6531 is essential to furthering the peace initiatives of the United States around the world.

This letter and those enclosed from the Chairman of the Joint Chiefs of Staff and the Secretaries and Chiefs of the Services reemphasize the reasons for this urgency.

Readiness in all of the Services will be substantially reduced in 1972 unless Selective Service induction authority is reinstated promptly. As the Secretary of Defense, it is my duty to make absolutely clear to the Congress my conviction that this reduced readiness would be critical to our national security.

The following table puts the total Department of Defense situation in perspective:

Fiscal year	Enlisted personnel total accession requirements	Draftees	Total enlistments (including draft motivated)	Estimate of true volunteers
1970	626,000	204,000	422,000	225,000
1971	555,000	154,000	401,000	230,000
1972	480,000-500,000			

Without the draft, we would require 80,000 to 100,000 more FY 1972 enlistments than the total number we obtained in FY 1971. This would be 250,000 to 270,000 more than our estimate of the number of true volunteers obtained in FY 1971. Such an increase simply is not possible in FY 1972.

The suggestion has been made that since we have gone more than two months without the draft and without dire consequences, why not try a while longer, at least until the end of the calendar year.

We clearly are going to need the draft in Fiscal Year 1972. Any further delay in enacting H.R. 6531 would have three effects:

1. It would place an unfair burden on the CY 1972 draft pool because 1972 draft calls probably would have to be larger than otherwise would have been the case in order to make up for the absence of a draft since July 1.

2. It would sharply reduce the hope of an all volunteer force by our target date of July 1, 1973. As the Service Secretaries said earlier this week in a letter to all members of the Senate: "Too much ground already has been lost by the delay in passage of H.R. 6531, and any further delay may jeopardize beyond redemption the prospects of achieving an all volunteer force by July 1, 1973."

3. Most important, it would, as noted earlier, substantially reduce military readiness in CY 1972 for both Active and Reserve forces and thus weaken our national security.

Sincerely,

MELVIN R. LAIRD.

CHAIRMAN OF THE JOINT CHIEFS OF STAFF,
Washington, D.C., September 16, 1971.

Hon. JOHN STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would like to express my grave concern over the impact on our military forces of a Congressional failure to extend the Draft Law. As you know, we are currently engaged in a program designed to attain a "zero draft status" (a difficult task at best), based on an orderly, structured program providing for measured accomplishment of interim goals which permit us to evaluate the impacts of the All Volunteer Force concept on national security as we proceed. The effects of this program directly on combatant capability and indirectly on quantitative and qualitative procurement in the active component of the Services, are extremely difficult to predict with any absolute certainty. It was for this reason that the Joint Chiefs of Staff have supported embarkation on the program in an orderly way, thus seeking to minimize or to avoid any adverse impact on national security resulting from potential reduction in readiness to meet our continuing military requirements.

Within this context, it is estimated that a significant percentage of the volunteers for service in the Armed Forces currently are draft-induced. Thus, without the draft, it is estimated that the Services will incur serious manpower shortfalls by the end of this fiscal year.

Beyond mere numbers, the draft is a major source for procuring the quality of people required to maintain a viable force posture. One of our most serious problems is that of obtaining the proper distribution of skills. Thus, even if there were adequate numbers in the absence of a draft, there is no assurance that the requisite quality to cover the full spectrum of our military personnel requirements would be available.

While a detailed implementation plan based on a failure of the Congress to enact a Draft Law has not been developed, initial review indicates significant adverse impacts on worldwide military forces available to the Unified/Specific commands to achieve our national security objectives. Either minimum essential units would have to be progressively reduced to zero strength, or all units across-the-board would be progressively reduced in manning and readiness status, resulting in dangerously low combat capability. For example, the inability of the Commander in Chief, Europe, to maintain assigned units in a combat effective status would degrade the in-being deterrent in Europe, while units in the Continental United States would similarly require extended times to be made for deployment in an emergency. The loss of readiness posture within units would occur more rapidly than might be indicated by direct reduction in strength, since an increasing part of the residual unit strength would be required to be devoted simply to maintenance of equipment and facilities. Reduction in strength of Army and Marine Corps divisions would jeopardize the capability to meet the land force requirements of Commander in Chief, Europe, in the event of a North Atlantic Treaty Organization conflict and would seriously restrict our ability to meet any other worldwide contingency. The reduced operational status of Navy ships would severely restrict the capability to support essential worldwide deployments. The reductions in the readiness and deployment capability of aircraft squadrons would limit the combat capability available to Unified Commanders being reflected in reduced sortie rates which concomitant reduction in surge capability or sustaining power.

Although the long-term implications are much more indefinite, it can be concluded that there will be a intensification of the foregoing impacts with concomitant and progressive erosion in both readiness and overall capability to meet the requirement of the national security.

In summary, Mr. Chairman, I am concerned that the failure to attain early enactment of draft legislation will jeopardize the credibility of our deterrent role in world peace and have a lasting impact on both our friends and our potential enemies.

Warmest personal regards.

Sincerely,

T. H. MOORER,
Admiral, U.S. Navy.

DEPARTMENT OF THE ARMY,
Washington, D.C., September 17, 1971.

Hon. JOHN C. STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: You have asked us to estimate the impact on the Army of a delay of several months in draft legislation and of the impact if draft legislation is not approved at all. Our estimate is based on these interpretations and assumptions:

The delay of several months will be called Case 1.

In Case 1, the pay bill remains tied to the draft legislation and could not be expected to be passed separately.

The lack of approval of draft legislation at all will be called Case 2.

For Case 2 we assume that increased pay and allowances in amounts similar to those in the current bill will be effective on 1 July 1972.

Data already accumulated since the no-draft condition of July and August are quite convincing.

The discussion that follows considers first quality and then quantity.

Example: In July 1970, 3,700 men were qualified for and enlisted to attend a service school of their choice; in July 1971, only 2,400 enlisted for the same option. This choice required high mental qualifications.

Example: In August 1971, there were 14,400 male enlistments. Of these, there were 3,946 who chose no option. These 3,946 are the only ones available for assignment to positions of the Army's choice. Data on these 3,946 are compared qualitatively below to the FY 71 Army-wide averages. All figures are percentages.

IMPACT OF DELAYED AND NO DRAFT LEGISLATION

	Mental		Non-high school graduate	Moral waiver required
	Higher categories I and II	Lowest acceptable category IV		
Army average, fiscal year 1971	33	25	33	1.1
3,946	19	38	54	4.4

Example: In July 1971, 3,555 men elected the combat arms as a choice upon enlistment. Data on these 3,555 compared to Army

averages are shown below. All figures are percentages.

	Mental		Non-high school graduate	Moral waiver required
	Higher categories I and II	Lowest acceptable category IV		
Army average, fiscal year 1971	33	25	33	1.1
3,555	22	29	56	1.1

Example: The 13,600 male enlistments for July are compared qualitatively to the FY 71 Army as a whole. All figures are percentages.

	Mental		Non-high school graduate	Moral waiver required
	Higher categories I and II	Lowest acceptable category IV		
Army average, fiscal year 1971	33	25	37	1.1
July 1971	27	26	47	1.1

IMPACT OF DELAYED AND NO-DRAFT LEGISLATION

Jobs in the Army are available for persons of all but the very lowest mental capacity. However, as the Army continues to develop sophisticated equipment in an effort to replace men by machines, the proportion of persons of higher mental capacity and good educational background must increase. But, the trend noted since we have had no draft and as we have made great effort to increase the number of volunteers has been in the opposite direction. In both cases, the Army will be in a qualitative hole by early CY 1972 that we estimate will take from one to two years to correct.

The following discussion covers the impact on the Army from the standpoint of quantity.

Case 1: Delay for several months

Impact to Date

Current enlistments average 14,000 per month miss by 4,000 per month to meet the Army's FY 72 requirement.

Low input of new soldiers into the Army in July–September 1971 will not be sufficient to meet oversea requirements starting as early as December 1971. The deficit must be met by transferring soldiers assigned to CONUS units to oversea commands, thereby reducing readiness in CONUS units and increasing personnel turnover.

Additional Impacts Expected

By mid-FY 73 there would be a shortage of approximately 53,000 trained personnel, roughly the manpower for two divisions and their peacetime support. This shortage, spread over the Army force structure would mean: Oversea commands would suffer from lack of qualified combat arms replacements, and the ability of the Army to respond to any international or domestic emergency would be seriously impaired.

Even if the draft is resumed on 1 July, 1972, a yearly ceiling of 140,000 will stretch the rebuilidng of forces and readiness over an addition 12 to 18 month period.

The current 14,000 monthly enlistments continue to be sustained in part by draft pressure on individuals. Pre-induction physicals are continuing and the draft lottery has been held. Further delay in draft legislation will cause a reduction in these draft-motivated enlistements.

A delay in the pay bill will reduce the number of enlistees generated by this incentive. This, in turn, will increase draft requirements whenever the draft resumes.

From 80 to 90 percent of Reserve or National Guard enlistments are draft motivated: Reserve component units would be facing declining strengths while the capability to execute approved strategy is increasingly dependent upon a truly ready reserve force. Sixteen States and the District of Columbia now have no personnel waiting to join. There has been a net reduction of 10,000 in total Reserve strength in the last two months. Added delay in draft enactment would further degrade readiness of the Reserves.

Summary

Delay of passage of the draft bill creates an ever-increasing deterioration of the Army because of personnel shortages. Delays already incurred will create trained strength shortage in early 1972 that cannot be overcome because of training lead time. The longer the delay, the worse the problem becomes, while rebuilding becomes increasingly difficult. Efforts to increase enlistments and move toward a zero draft are undermined by delay in the pay raise.

Case 2: No Draft

(Pay Raise Effective 1 July 1972)

By end-FY 72, the Army would be reduced to a trained strength of approximately 750,000.

By end-FY 73, the trained strength of the Army would be down to approximately 550,000—roughly half the size of today's Army. This would mean:

The United States might not be able to meet its treaty commitments, thereby placing in jeopardy two of the three basic principles of the Nixon Doctrine: partnership and strength.

Extensive base closures and reduction in force of civilian employees.

Reduction in force or in grade of Army officers to realign officer-enlisted ratios. Approximately one of every three officers would be released.

Reduction in force or in grade of large numbers of career sergeants to provide balance between non-commissioned officers and privates.

The Army will lose all draftees plus draft-motivated enlistments estimated at 50% of the draft. Additionally, the delay of the pay raise will adversely affect recruiting efforts. The reduced accessions will fall far short of the Army's manpower requirements.

Summary

If the draft is allowed to die, by end-FY 73 the Active Army and Reserve Components would be reduced to about half of present size—a force unable to fulfill national commitments or adequately respond to either foreign or domestic emergencies. Additionally, this drastic reduction would require closing many of the Army's bases, major reductions of the civilian work force, and cancellation of major procurement plans.

We urge the early passage of draft and pay legislation in the interest of national security.

ROBERT F. FROEHLKE,
Secretary of the Army.
W. C. WESTMORELAND,
General, U.S. Army, Chief of Staff.

DEPARTMENT OF THE NAVY,
OFFICE OF THE SECRETARY,
Washington, D.C., September 16, 1971.

Hon. JOHN STENNIS,
Chairman, Committee on Armed Services, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We are compelled to provide to you our views with regard to the importance to the national defense effort of achieving an extension of the selective service act as proposed in H.R. 6531. In following the debates on the Senate floor, we find that a number of the arguments which suggest remitting that bill to the committee fail to recognize a central issue of significance to the readiness posture and capabilities of our Navy.

The President is dedicated to continuing and to accelerating, if at all possible, our rate of withdrawal of combat troops from Southeast Asia. The Department of Defense is currently executing a planned withdrawal that will reduce the numbers of our men in country in South Vietnam to 184,000 by December of this year. We anticipate additional reductions to be announced in October.

The role we foresee for the Navy in support of this withdrawal demands at least as great an effort on the part of our Seventh Fleet forces as we have experienced over the past two years. Our Seventh Fleet ships and aircraft will be required to operate under greater pressures and with shorter notice to respond to the enemy's thrusts as the withdrawal accelerates.

We are currently maintaining three carrier task groups and additional supporting ships as an integral part of Seventh Fleet forces today. The Seventh Fleet consists of 82 ships and is manned by 43,380 men.

In the absence of draft authority, we estimate that the Navy will fall short of authorized strength on a gradual basis during the remainder of this fiscal year. While in the past two months significant numerical shortages have not developed despite the absance of draft authority, we find that our recruiting services are experiencing more difficulty to obtain young men who meet the specific requirements for entry into the Navy. We are beginning to see some indicators of soft spots in our capability to obtain required numbers of high quality personnel in our more technical programs. Our true difficulties in recruiting tend to be masked at this time by previously committed enlistees in the pipeline. Any numerical shortfalls that develop in the out months will have a direct impact on our readiness posture.

We would anticipate, based upon our best analyses that the Navy will experience a shortfall to end strength by June 1972, of approximately seven percent overall. In numerical terms, this equates to a shortage of 30,000 to 35,000 men. This numerical shortage will be directly translated into reduced personnel assets in the fleet ships and squadrons. I anticipate that up to 40 ships and 33 aircraft squadrons would be in a lesser state of readiness and would probably not be ready for combatant operations due to overall manpower shortages of this magnitude.

This immediate numerical shortage will cause Navy to impose more severe manpower policies in order to retain skilled personnel in high priority programs and forward deploying units of the Sixth and Seventh Fleets. The obvious morale effects of undermanning would generate a self-defeating and counterproductive impact on our longer term personnel programs. Our skilled people, career and non-career, will experience longer deployments, quicker turn-arounds, and intensified family separation. Our best efforts have been put forth in the past two years to attack these vital personnel issues without adverse effect on our readiness posture. Failure to meet our overall strength requirements can only endanger progress which we have made and result in a downturn in our personnel posture from a morale standpoint.

More serious effects of this shortage will be reflected in the Navy's posture and capabilities in future years because the shortage will preclude Navy from producing the required numbers of trained specialists and tradesmen who in turn become the petty officers of the future. This indirect effect will occur because of the length of our training pipelines. For example, it currently requires 56 weeks of specialized training to produce a qualified electronics technician for our more sophisticated Navy systems.

The erosion of our numerical and quality oriented inputs may have an adverse effect in one or two years on our strategic posture as well as our replacement training capability to support our nuclear propulsion program and our polaris submarine forces. The Navy's management of these priority programs provides a cushion against an immediate shortage but the morale and at-

titudes of the young technicians conducting strategic deterrent patrols are vital factors which must not be overlooked. In the past year we have observed a steady decline in reenlistments of nuclear trained petty officers. Coupled with a complete suspension of the draft, this decline could affect those personnel in the training pipeline as well as the ships. Attempts to abort extended enlistment contracts may occur. This combination of events would result in additional demands upon the few remaining qualified personnel manning our submarine forces today contributing to lowered morale and initiating a downward spiral in readiness of the strategic forces.

The rate of true volunteers into our Navy is estimated to be slightly higher than 50% among our male recruits. The remainder of the young men coming into the Navy apparently do so under the direct influence of draft inducement. The pay raise portion of H.R. 6531 will help significantly in making the naval service more competitive with other sections of our national economy.

We are convinced that this major improvement to the lower rank pay scales is a sound step towards accomplishing an all volunteer force. It is premature, however, considering the serious demands placed upon the Navy to sustain immediate readiness, to suggest that draft authority can be uncoupled and that pay alone will solve the manpower requirements of the Navy. A transition period in which a draft authority continues hand in hand with the development of other incentives and inducements to serve would appear a most prudent course of action.

In short, the prosecution of the President's policies during the next year, will entail increasing responsibilities for the Navy. The manpower shortages which would result from the cessation of the draft would steadily erode our capability to guarantee the safe and expedious discharge of these responsibilities. We are submitting this letter in the hopes that it will contribute to a sound program for transition towards a zero draft.

Sincerely yours,

JOHN H. CHAFEE,
Secretary of the Navy.

DEPARTMENT OF THE NAVY,
HEADQUARTERS, U.S. MARINE CORPS,
Washington, D.C., Sept. 16, 1971.

Hon. JOHN STENNIS,
Chairman, Committee on Armed Services,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: If the draft is not extended, it is anticipated that the Marine Corps will experience a significant shortfall during fiscal year 1972 in enlisted accessions and the number of acceptable applicants for officer programs to satisfy the needs of the regular and reserve establishments.

Estimates for the past two years indicate that from 33 to 45% of Marine Corps enlistments have been draft motivated. In an immediate absence of the draft and with adherence to current prerequisites for enlistment, the Marine Corps new accession shortfall might range from 18,000 to 24,000 during fiscal year 1972. Quotas were not met during July and August in the absence of draft pressure. In July, 5256 enlistees of a quota of 5500 (96.6%) were sent recruit depots. However, 64.7% of these enlistees were personnel from the delayed enlistment pool who had enlisted prior to July 1, 1971. In August, 5280 enlistees of a quota of 5600 (94.3%) were shipped; but again, 39.9% of August shipments were enlisted prior to July 1, 1971. An utmost effort was required of Marine Corps field recruiters to achieve these recruits.

The Marine Corps is vitally concerned about the quality of its enlisted accessions which would result if an immediate cessation of the draft occurred. It would not be sufficient to satisfy technical skill requirements. In July and August, traditionally months of high quality input because of high school graduation, the percent of new accessions that were high school graduates was only 61.1%. Mental group percentages were 2.2% mental group I, 24.5% mental group II, 53.6% mental group III, and 19.7% mental group IV. Minimum requirements, to fully satisfy skill demands in light of an imposed 20% mental group IV quota, are 4% mental group I, 35% mental group II, and 41% mental group III.

Satisfying both the officer and enlisted manpower requirements of the Organized Marine Corps Reserve has been a major problem in the two and one-half month absence of draft pressure. This problem will continue to be the most difficult in a zero draft environment or in an environment where draft calls are significantly reduced. In July, 559 Reserve enlistees of a quota of 999 (55.8%) were shipped. Of this number, 63.6% were personnel enlisted prior to July 1, 1971. In August, 529 of a quota of 999 (52.9%) reported to recruit depots but 35.1% of these were enlisted prior to July 1, 1971.

In the absence of draft pressure, officer accession requirements are not presently being met. It is estimated that over 50% of officer accessions for the last two years were draft motivated. Short lead-time programs are being affected immediately. In July and August, only 430 of a quota of 724 (59.4%) were obtained. Long lead-time programs are suffering from reduced enrollments, with the major impact to be felt in fiscal years 1974 and 1975.

Draft pressure must be maintained until at least July 1, 1973 to permit programs designed to enhance the quality of service life and improve accession and retention to take effect. Proposals to improve compensation, housing, and other aspects of service life have been included in pending zero draft budget legislation. All of these programs will require time to complete and cannot reduce dependence on the draft immediately. It cannot be overemphasized that the FY 72 Special Zero Draft Budget was not designed to provide a complete program for immediate transition to zero draft. Even granting a significant initial impact, most programs, if approved, could not be implemented in sufficient time to provide optimum results during fiscal year 1972.

The Marine Corps requires immediate enactment of draft legislation. In addition, progress in adapting to a zero draft environment will hinge on approval of fiscal year 1972 zero draft proposals and on the amount of funds and additional legislation forthcoming in fiscal year 1973 to attract and retain Marines and Marine Reservists of high quality.

Sincerely,

JOHN H. CHAFEE,
Secretary of the Navy.
L. F. CHAPMAN, JR.,
General U.S. Marine Corps, Commandant of the Marine Corps.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., September 16, 1971.

Memorandum for the Secretary of Defense.
Subject: H.R. 6531.

Any significant delay in passage of the Draft/Pay Bill will severely reduce the Air Force's capability to perform its assigned mission.

We have experienced a recruiting deficit of 1,779 for Fiscal Year 1971. Quality has declined sharply as indicated by the decline in the high school graduate rate from 93% in 1970 to 83% in July and August 1971. The number of enlistees in the two top mental categories fell from 54% in 1970 to 40% at present. Enlistment waiting lists have essentially disappeared.

The Air Force requires 100,000 non-prior service accessions in FY–72 to maintain in the Force at the required level. Over 50% of active Air Force accessions are draft motivated. If the Selective Service Bill, along with the Procurement and Retention Incentives it contains, is not passed, we expect to fall short of our FY–72 objective by at least 25,000 people. The vast majority of this shortage will be in the higher mental categories which we use in such skill areas as electronics, aircraft and missile maintenance and computer operation. The shortages in quality and quantity will impact on our operating units by March 1972 and we expect a continuous erosion in mission capability, subsequent to that time, if the current recruiting environment continues.

Unless early passage of H.R. 6531, Draft/Pay Bill, is assured, current and future Force capability will be seriously threatened.

ROBERT C. SEAMANS, JR.,
JOHN D. RYAN,
General, USAF, Chief of Staff.

Mr. STENNIS. Mr. President, the committee stands ready, as long as debate lasts, to render such further information available and to make such further discussion possible as may be called on by the Senate. Otherwise, we will feel content to be in attendance here but not require very much more time of the Senate unless called upon to do so by a Member.

I did refer to the vote of the Mansfield amendment on June 22, 1971, and said that I would give the exact figure on that. At that time, the original Mansfield amendment passed by a vote of 57 to 42.

I thank the distinguished Presiding Officer, and I thank the membership, and, under those circumstances, Mr. President, as outlined, I yield the floor.

QUORUM CALL

Mr. STENNIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GAMBRELL). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAVEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. TUNNEY). Without objection, it is so ordered.

Mr. GRAVEL. Mr. President, the issue to be voted on tomorrow, will be whether this body should invoke cloture to achieve an up or down vote by the Senate on the conference report.

The case made by my distinguished colleague from Mississippi, the chairman of the Armed Services Committee, is that there has been sufficient deliberation within this body, sufficient deliberation of the issues, discussion and presentations by both sides, and that the Senate should come to an up or down vote.

In a normal situation, that would be the case. But in a situation as fundamental to our survival as the draft, it is reasonable to invoke the rules in order to delay consideration.

On the first page of Jefferson's Manual, Thomas Jefferson makes a concise case: That the majority can protect itself by its numbers and that the minor-

ity can only protect itself through the implementation of law or rules.

Certainly, my friend, the distinguished Senator from Mississippi, and numerous other distinguished Senators in the past, have not been adverse to using the filibuster, the tactic of unlimited debate, when they felt the issue warranted it, and when they felt strongly enough about the issues that they were willing to debate interminably in order to avoid the issue's coming to an up or down vote.

That is exactly the same tactic that we choose to employ now. Some of us feel so strongly about the course that this Nation has taken in its foreign policy and in the handling of its domestic affairs through the malapportionment of our resources, that we feel there should be a radical change.

I grieve, and grieve deeply, over the fact that it must be a minority and not a sensible majority that attempts to alter the direction of this country.

Mr. President, I cannot think of anything that distresses me more than the simple fact that we cannot muster a majority in this House of Congress, that we cannot muster a simple majority of Senators who would be willing to vote for an end to this unbelievable war, a war that all Americans realize is futile and that all Americans realize has gone on for too long. That we cannot seem to muster a simple majority to call an end to this war is beyond my understanding. Therefore, that we employ the tactic of a willful minority, I think, is very much in order. And I would hope that on tomorrow a sufficient number of Senators will express their desire to continue the debate on the draft issue and, of course, on the Mansfield amendment.

No case has been made, certainly, by the proponents of the draft, that the country needs the draft today. No figures have been brought forward and delineated on the number of men and the need for these men. Yet, we who oppose the draft have made a very fine case. We have come forward with figures supplied by the Department of Defense itself to show that there have been a sufficient number of people enlisting into the services on a voluntary basis so that it does not warrant the continuation of the President's induction powers.

In the last 2 months, there have been more young men to volunteer for the armed services than volunteered last year for the same 2 months. So the argument that we need the draft to force people to enlist into the armed services is not valid. That, indeed, is demonstrated by the facts of recent history. But those opposed to that argument, led by the President of the United States and Secretary of Defense Melvin Laird and the chairman of the Armed Services Committee in the Senate, raised the specter that our defense posture will be deeply endangered and that if we do not have the draft we will become a second-rate power in the world.

How tragic it is to hear these statements, because they clearly define our stength in the world in military terms and military terms alone, and say that we believe what makes us strong is the fact that we can place x number of men under arms, and the fact that we can annihilate and kill x number of people, and that is what makes us a first-rate power.

How little understanding is demonstrated here of what truly is the cause for our greatness. Stop and think of the fact that Japan today is considered a great power. In fact, it is considered the second most viable power in the free world today. Yet the Japanese spend about 1 percent of their gross national product on defense, as opposed to the 8.2 percent that we spend on national defense.

Why is it that they are such a great power if they do not have the military might and destructive capability that we have? Obviously, the true measure of greatness is not in militaristic, imperialistic muscle, but in the strength of the economic fiber that a nation has.

Our strength lies not in the Department of Defense. Our strength lies throughout this country in the productive capacity of its people. The strength of this Nation lies in its productive capacity and in its economic might, and not in its military might. So those who tell us that we have to have more people under arms, costing us more money, really do not address themselves to what is so important in understanding the situation; namely, that it is not our defense capability that enables us to compete with communism. The chance of our success lies not in our Military Establishment, but in our economic establishment.

If the Communist system fails in any degree because of the dictatorial nature of their government, they need but tighten the screws on the people they control. In so doing, they weather through any economic or sociological dislocation they might suffer as a result of their inordinate and insufficient military expenditures.

If we in the United States of America, however, make a similar mistake in the expenditures we make in the national defense, if we overspend foolishly for our defense—as I think we have been doing for the last 10 years, and are doing under the present administration—if we have 600,000 more men under arms than we need, and if this costs us $6 billion a year, and it is assumed that anything spent in the name of defense is an inadequate expenditure, then the only recourse we have is to use the tactics of the Soviets and to tighten the screws on the people through regulation, through a dictatorial form of government.

However, there is one unique difference between ourselves and the Soviet Union or communism, and that is that when they tighten the screws and intensify the dictatorial form of government, there is no great loss. They make no pretense over the fact that they are fighting fcr individual freedom or economic well-being.

But when we do it we destroy the very thing we are supposed to be fighting for or defending.

So those who think we are marching along toward a greater degree of self defense find we are marching along toward a greater loss of personal freedoms and economic well-being. This we see very clearly in the draft, because we deny freedom and justice to our young. But more importantly, I think the issue is sharpened through a comparison of history, realizing that our forefathers came to this country because they felt oppresed in foreign lands. The French, the British, Germans, Slavs, and Poles came to this country fleeing impressment into the military in the lands where they lived. They left their countries to come to America because they felt it would be a land of the free, where they would not be forced into service, unjust service to fight immoral and unjust wars.

Yet we find today the youth of this country leaving this great Nation for the same reason our forefathers came to this Nation: because they felt they were unjustly pressed into service to fight immoral wars.

That this democracy could take on the complexion of a dictatorial form of government really is something to cause great distress. That we should find ourselves in the minority in the Senate Chamber in wanting to vector away from a foreign policy that has brought us to this end is something very tragic, just as it is that we should be required to take recourse to the tools Thomas Jefferson so ably defined—tools my colleague from Mississippi is ready to say are necessary for the Members of this body if they feel strongly about the well-being of this Nation and the policies of this Nation.

I am sure my colleague will agree with me that if we feel strongly enough, and we do, to bring about unlimited debate, then certainly the only recourse is cloture. I can only say that I fully expect, God willing, to be a Member of this body 2 years from now. If we are not successful in the effort to thwart extension of the draft in this country today I certainly want to give him notice that 2 years hence, in order to reinstitute the draft—and I am sure the move will be afoot 2 years from now, just as it will be 4 years from now or 6 years from now, because there are some who feel greatness of this country is military might—it will take a cloture vote, as long as I am a Member of this body.

Let me add as an appendage that were this Nation truly in danger and under threat of invasion, were emergencies to exist, I would be the first to ask for the draft and to ask for the manpower to come forward to defend this country; but as long as this Nation is not under threat of invasion or in an emergency, I see no reason why we, as peace-loving people, should, at the point of a gun, press young people into the service of this country. I think there is enough greatness about this country that there are enough people who will want to defend it in peacetime on a volunteer basis.

I think we have set that stage, if it has not been set and proven already throughout the history of this country. We have set it with the ample pay increases that have been passed by this body and which

are embodied in the conference report. I would hope that with the noninvocation of cloture tomorrow time would be provided for the Members of this body to come to their senses and realize that our security does not lessen in any measure.

We have stationed 310,000 American boys as a tripwire in Europe; 310,000 American boys that are held hostage because Europeans have no faith in our commitment, a commitment that we have honored with our blood in the First World War and in the Second World War. Europeans do not choose to do so themselves because they do not have our extreme paranoia over communism.

Under the Nixon doctrine we are supposedly moving away from the effort of physically containing communism, but, of course, we are not living under a Nixon doctrine. We are living under a Nixon rhetoric, and that is where we say one thing, hoping people will believe it, while doing something else.

For the life of me I do not know why we have 18,000 American boys stationed in the Philippines. I do not think it adds to the security of this country, yet it certainly adds to the economic burden that this country must endure.

I do not know why we have 1,700 American boys stationed in Ethiopia, except possibly to ward off any insurgency that might take place, and to guarantee and insulate the government of Haile Selassie, a monarchy, from revolutionary change.

It is interesting that garrisoning of American boys around the world, by and large, is not so much to defend ourselves; and if it is to defend ourselves, we certainly impose on the peoples of these countries what we consider our own self-interest in the world today. I think this is most unfortunate, because if there is an interest we have around the world it should be in the legitimate self-determination of the peoples of the world, and not a definition that we might develop.

This, of course, has led us to a policy of not only garrisoning American soldiers around the world so that we can make a determination of how the world should operate under our myopic inspection, but it also has caused us to take our wealth and treasure and disperse it around the world like a drunken sailor. We would be better advised to keep our treasures at home and keep our boys at home.

This is not isolationism. This is merely a new realization of wherein lies our strength; and our strength lies here at home, and not abroad with flabby troops.

To realize the true hoax of what has been foisted upon the American people one needs to read the continuing crisis of our military might in the recent series of articles in the Washington Post. I think they help us truly realize what a tragic waste we are making of our resources around the world.

Mr. President, let me conclude by saying that, certainly, if there is no other way to bring sense to this body than by extended debate, than by the use of the filibuster, then I think it is warranted. I would hope that this body tomorrow would vote not to close off debate, would vote "no" on cloture, in an effort to provide time for this body and the American people to reexamine the course we are charting under the present efforts of this administration.

I yield the floor.

Mr. STENNIS. Mr. President, I have listened very carefully to the Senator from Alaska. I want to doubly assure him that I want our Nation to be great for something in addition to and besides whatever military might we may have. Certainly it is not my goal to make it great by virtue of military might, but I certainly want the other, many great things that we do have for our people protected properly by a reasonable amount of adequate military strength, manned by personnel of a type that is absolutely necessary in order for us to have the military strength we need to support our national policies.

Military strength is not a weapon. Military strength is not a person in a uniform. Military strength comes from the right kind of person, with the right training, the right dedication, and led by the proper kind of officers. That is the kind of men we have pleaded for here.

I have cited over and over figures to show that 42 percent of our Navy forces at sea come from draft motivated enlistees. I refer to the technicians who man our submarines, our carriers, our carrier planes on the decks.

The Air Force is supposed to be all volunteer, but 47 percent of these essential, intelligent young men that make it possible for these planes to fly and the missiles to fire have been coming into the Air Force through draft motivation.

Those crews are running out. We find by these new statistics that we already have developed a situation in 75 days where very close to 50 percent of those who are coming into the Army, without the influence of the draft law being on the books, are not high school graduates and many have to be taken from the lowest of four mental categories, the lowest possible level of intelligence and ability that the services are allowed to take or that they can possibly take into the service. With all due deference, we do not get many men that way that are worth half their keep, even while they are in training. When this bill passes, the services will try, during this transition period, with their pockets stuffed full of money to go out and make an effort to get the right kind of volunteers. That is one of the things I am certainly interested in. If they come in here, after spending money on these increased salaries that go with this bill, and show that they have spent it on "category four" men they are certainly going to have trouble from us here in Congress. We are for quality men. We have enough of the others already. So we see what we will have if we do not have a draft law.

This bill is only for 2 years. During this transition period, there is going to be an opportunity during those 2 years to see if we can get along without a draft law. I would be happy if that proved to be true, but I do not think it is going to be true. I think it is going to develop that we are not going to be able to get young men of the right character and level of ability to carry out the missions, and we will have to continue the draft.

With all deference, the Senator from Alaska says that, regardless of how it all comes out, regardless of what the facts are, 2 years from now, unless there is an extreme emergency, he will still be filibustering against a like bill. That is a mighty good argument for the rest of the Members to see that there is no use to hold back on cloture any longer; that Senators who think we ought to press on as to whether we should have a draft law or not are certainly justified in going ahead and voting for cloture in view of that statement. If Senators do not want to vote for the bill, that is a matter for their judgment. After all, if they voted for cloture tomorrow, they would not be pledging to be voting for the bill. But, as a matter of commonsense, Mr. President, the Nation must have a decision made here, and every day adds to the tragedy and to the insecurity of our country. We must make a decision here as to whether or not we are going to have a draft.

The President of the United States is responsible for trying to set policies affecting world questions, and, of course, he is entitled to know how much authority he is going to have to back up those policies. I am not talking about trying to undergird the whole world and fight all its wars. I never did believe in that, nor think we could do it, but I am talking about the hard problem any President is up against in deciding what policies he can enunciate and get carried out. He wants to know whether this country is behind him or not. He has to know whether or not, if needed, he has a reasonable amount of military manpower to back up those policies. He certainly does not have it now, and will not have it 6 months from now, especially if we rely on what we have seen happen around here these last 2½ months.

I refer again to the fact that every conceivable argument has already been made about this bill. After it got to the floor, there were Senators who proposed that we have no draft bill, and we voted on that. There were others who said, let us have only 18 months of the draft, and we voted on that. I believe another one said 20 months only. All those proposals were voted down.

Finally, we settled on 2 years, and it rolled on to passage, as I say, with only 16 votes against it.

Time has run out. Reason has run out. We have had a very candid notice here that "You are always going to have to invoke cloture on me as long as I am here, in order to get a draft bill, unless there are extreme circumstances, a direct emergency far beyond what we have now."

We need no further notice than that. So let us put a stop to having to take men of this lowest category into our Army. Let us put a stop to losing the high school graduates—it has already fallen off 13 percent, Mr. President. Let us put a stop to that, vote cloture tomorrow, and then pass this bill as soon as the Senate rules will permit.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The ques-

tion is on agreeing to the conference report.

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CRANSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. CRANSTON. I thank the Chair.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOGGS). Without objection, it is so ordered.

RECESS

Mr. BYRD of West Virginia. Mr. President, I move that the Senate stand in recess until 2:50 p.m. today.

The motion was agreed to; and (at 2:03 p.m.) the Senate took a recess until 2:50 p.m.

On the expiration of the recess the Senate reassembled and was called to order by the Presiding Officer (Mr. BOGGS).

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HRUSKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. HRUSKA when he introduced S. 2546 are printed earlier in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

THE RELATIONSHIP BETWEEN THE WATER QUALITY ACT OF 1970 AND THE TREATIES ON OIL POLLUTION ON THE HIGH SEAS

Mr. COOPER. Mr. President, along with Senator MUSKIE, I am a member of both the Committee on Public Works and the Committee on Foreign Relations. As ranking minority member of the Committee on Public Works and a member of the Subcommittee on Air and Water Pollution I participated in the hearing held by the Air and Water Subcommittee on the relationship of the Water Quality Improvement Act of 1970 to the treaties now pending before the Committee on Foreign Relations. The 1970 act, which had its origin in the Public Works Subcommittee on Air and Water Pollution, is a broad progressive act, particularly section 11 on oil pollution. I would like to add and publicly acknowledge that section 11 was, in large measure, the product of Senator BAKER, a member of the Senate Public Works Committee. I also commend Senator PELL of the Foreign Relations Committee, who provided leadership in that committee, as he has on all measures relating to the oceans.

I joined with other members of the Subcommittee on Air and Water Pollution in recommending to the chairman and the Committee on Foreign Relations the reporting of the liability treaty favorably, but holding it on the Senate Calendar until the supplementary agreement, the subject of current negotiations, is completed and transmitted to the Senate for advice and consent. I believe this is an appropriate way to seek the most effective overall international agreement. It is now the recommendation of the Committee on Foreign Relations, which is now before the Senate. I continue to support granting advice and consent to the two treaties while holding the third pending further negotiations.

I believe the issues raised by the convention and the domestic Water Quality Improvement Act of 1970 are well discussed in the material which was enclosed with the letter of the Subcommittee on Air and Water Pollution to the Committee on Foreign Relations. I will not repeat them.

What I would like to do today is commend, for the RECORD, the administration for vigorously prosecuting the formulations of international agreements dealing with environmental controls. As President Nixon accurately pointed out in his transmittal message and repeated in his message on the environment in February of this year, environmental quality is all pervasive and cannot be obtained in any nation through the efforts of that nation alone. We have all heard, repeatedly, over the last several years that the earth, the biosphere, is a single system. When it is altered in one place it is altered in every place.

Immediately, then we have in the environment an issue which can, and I believe will, bring the peoples of the earth together. The nations of the world simply cannot proceed independently of each other, for the life support systems are not independent, and perhaps from the common base of our life support system we can take significant strides toward establishing peace and harmony on earth.

It is in this hope that I view the 1972 U.N. Conference on the Environment. For the first time we have an issue completely unrelated to ideology or economic system. We have an issue over which everyone shares great concern; an issue which should build trust among nations of the world. It is a unique issue where preserving one's own interest also preserves the interest of others.

I hope the momentum generated around the environmental issue, nurtured by all people's concern for the quality of their life, will generate new horizons of international diplomatic cooperation. I urge Members of the Congress and the executive branch to focus on the environmental issue in this context for it affords perhaps the most promising view of the future.

I believe the President recognizes the fundamental concern over the quality of the environment. It is a recognition shared by the Congress. In entering into and now transmitting to the Senate an agreement to control pollution of the sea by oil the President and the United States has moved aggressively in an area which we in the Subcommittee on Air and Water Pollution have heard for many years is causing great degradation of the biosphere of the world. This is an important treaty and one which, with the supplementary agreement, will move the world tremendous strides, not just in the control of pollution by oil, but in establishing a climate in the international diplomatic community which would enable the establishment of additional agreements over other areas of environmental control. Examples of mercury, DDT, and their general movement through the biosphere are graphic examples of the essential need for international control.

Just this spring in the Subcommittee on Air and Water Pollution, in hearings on the question of the economic impact of environmental controls we heard testimony on the potential of U.S. corporations or subsidiaries finding it cheaper to conduct business in foreign countries where environmental controls are less strict. The dimensions of this problem are truly immense, for while we should not permit U.S. corporations to construct facilities abroad that we would not accept for our own people, we must recognize the fact that there are very substantial economic disadvantages imposed on U.S. corporations in the international competitive market structure if they are required to conduct their business operations bearing costs greatly disproportionate to those costs borne by foreign competitors. Perhaps, as we are investigating in the Subcommittee on Air and Water Pollution, there are short term programs such as Government payments of the cost differential which can be enacted. However, it should be immediately obvious that any truly adequate program can be reached only through international agreement.

I would hope the convention on oil pollution, along with the 1972 United Nations Conference, combined with the growing concern among all peoples of the world for the quality of the environment, will establish a climate in which we can move to the greatly needed and expanded international controls.

EXECUTIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I move that the Senate go into executive session.

The motion was agreed to, and the Senate proceeded to the consideration of executive business.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BOGGS). Without objection, it is so ordered.

THE INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES—CERTAIN AMENDMENTS TO THE INTERNATIONAL CONVENTION FOR PREVENTION OF POLLUTION OF THE SEA BY OIL

The PRESIDING OFFICER (Mr. BOGGS). Pursuant to the previous order, the Senate will proceed to vote on the resolution of ratification on Executive Calendar No. 8, Executive G, 91st Congress, second session, which the clerk will report.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein). That the Senate advise and consent to the ratification of the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties. (Ex. G, Ninety-first Congress, second session.)

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the resolution of ratification on Executive Calendar No. 8, Executive G, 91st Congress, second session, the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Rhode Island (Mr. PELL) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF) would each vote yea.

Mr. GRIFFIN. I announce that the Senator from Iowa (Mr. MILLER), the Senator from Colorado (Mr. DOMINICK), the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Ohio (Mr. SAXBE), the Senator from Ohio (Mr. TAFT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oregon (Mr. HATFIELD), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are absent on official business.

The Senator from New York (Mr. JAVITS) is necessarily absent because of religious observance.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The yeas and nays resulted—yeas 75, nays 0, as follows:

[No. 224 Ex.]

YEAS—75

Aiken	Curtis	McClellan
Allen	Dole	McGee
Allott	Eagleton	McIntyre
Anderson	Ellender	Metcalf
Baker	Ervin	Mondale
Bayh	Fannin	Montoya
Beall	Fong	Nelson
Bellmon	Fulbright	Packwood
Bennett	Gambrell	Pearson
Bentsen	Gravel	Percy
Bible	Griffin	Proxmire
Boggs	Gurney	Randolph
Brock	Hansen	Roth
Buckley	Harris	Schweiker
Burdick	Hart	Scott
Byrd, Va.	Hollings	Smith
Byrd, W. Va.	Hruska	Sparkman
Cannon	Hughes	Spong
Case	Inouye	Stennis
Chiles	Jackson	Symington
Church	Jordan, N.C.	Talmadge
Cook	Jordan, Idaho	Thurmond
Cooper	Long	Tunney
Cotton	Mansfield	Weicker
Cranston	Mathias	Williams

NAYS—0

NOT VOTING—25

Brooke	Magnuson	Saxbe
Dominick	McGovern	Stafford
Eastland	Miller	Stevens
Goldwater	Moss	Stevenson
Hartke	Mundt	Taft
Hatfield	Muskie	Tower
Humphrey	Pastore	Young
Javits	Pell	
Kennedy	Ribicoff	

The PRESIDING OFFICER. On this vote the yeas are 75, and the nays are 0. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Pursuant to the previous order, the Senate will now proceed to vote on the resolution of ratification of Calendar No. 9, Executive G—91st Congress second session—certain amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, which will be read.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Certain Amendments to the International Convention for Prevention of Pollution of the Sea by Oil. (Ex. G, Ninety-first Congress, second session.)

Mr. BYRD of West Virginia. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order.

The question is on agreeing to the resolution of ratification. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Utah (Mr. MOSS), the Senator from Maine (Mr. MUSKIE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Indiana (Mr. HARTKE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Rhode Island (Mr. PELL) are absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. MAGNUSON). the Senator from Rhode Island (Mr. PELL), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Connecticut (Mr. RIBICOFF) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Iowa (Mr. MILLER), the Senator from Colorado (Mr. DOMINICK), the Senator from Massachusetts (Mr. BROOKE), the Senator from Arizona (Mr. GOLDWATER), the Senator from Ohio, (Mr. SAXBE), the Senator from Ohio (Mr. TAFT), the Senator from Vermont (Mr. STAFFORD), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from Oregon (Mr. HATFIELD), the Senator from Alaska (Mr. STEVENS), and the Senator from North Dakota (Mr. YOUNG) are absent on official business.

The Senator from New York (Mr. JAVITS) is necessarily absent because of religious observance.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from Colorado (Mr. DOMINICK), the Senator from Iowa (Mr. MILLER), the Senator from Oregon (Mr. HATFIELD), the Senator from New York (Mr. JAVITS), the Senator from Alaska (Mr. STEVENS), the Senator from Ohio (Mr. TAFT), and the Senator from Texas (Mr. TOWER), would each vote "yea."

The yeas and nays resulted—yeas 75, nays 0, as follows:

[No. 225 Ex.]

YEAS—75

Aiken	Burdick	Eagleton
Allen	Byrd, Va.	Ellender
Allott	Byrd, W. Va.	Ervin
Anderson	Cannon	Fannin
Baker	Case	Fong
Beall	Chiles	Fulbright
Bellmon	Church	Gambrell
Bennett	Cook	Gravel
Bentsen	Cooper	Griffin
Bible	Cotton	Gurney
Boggs	Cranston	Hansen
Brock	Curtis	Harris
Buckley	Dole	Hart

Hollings	McIntyre	Scott
Hruska	Metcalf	Smith
Hughes	Mondale	Sparkman
Inouye	Montoya	Spong
Jackson	Nelson	Stennis
Jordan, N.C.	Packwood	Stevenson
Jordan, Idaho	Pearson	Symington
Long	Percy	Talmadge
Mansfield	Proxmire	Thurmond
Mathias	Randolph	Tunney
McClellan	Roth	Weicker
McGee	Schweiker	Williams

NAYS—0

NOT VOTING—25

Bayh	Kennedy	Ribicoff
Brooke	Magnuson	Saxbe
Dominick	McGovern	Stafford
Eastland	Miller	Stevens
Goldwater	Moss	Taft
Hartke	Mundt	Tower
Hatfield	Muskie	Young
Humphrey	Pastore	
Javits	Pell	

The PRESIDING OFFICER. On this vote the yeas are 75, and the nays are 0. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

TRIBUTE TO SENATOR PELL

Mr. MANSFIELD. Mr. President, with the unanimous final ratification of both the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and the Amendments to the International Convention for Prevention of Pollution of the Sea by Oil, the Senate is indebted deeply to the distinguished Senator from Rhode Island (Mr. PELL). It was mainly through his diligent and persistent efforts in steering these measures through the Committee on Foreign Relations that the Senate accepted them so overwhelmingly. Senator PELL has already established himself as one of the leading experts in this body on the environment. His work as chairman of the Subcommittee on Oceans and International Environment has been outstanding.

Unfortunately Senator PELL was away on the official business of the Senate today and could not be here to witness the completion of his work product. May I say again, however, that we are deeply in his debt and appreciate his efforts immensely.

LEGISLATIVE SESSION

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION AND REVISION OF THE DRAFT ACT AND RELATED LAWS—CONFERENCE REPORT

Mr. BYRD of West Virginia. Mr. President, what is the question pending before the Senate?

The PRESIDING OFFICER (Mr. FANNIN). The Chair lays before the Senate the pending business, which the clerk will state.

The legislative clerk read as follows:

The report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 6531) to amend the Military Selective Service Act of 1967; to increase military pay; to authorize active duty strengths for fiscal year 1972; and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. BYRD of West Virginia. Mr. President, what is the unfinished business?

The PRESIDING OFFICER. The unfinished business is the Military Procurement Act.

Mr. BYRD of West Virginia. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF SENATOR MONTOYA TOMORROW

Mr. BYRD of West Virginia. I ask unanimous consent that at the conclusion of the remarks of the junior Senator from West Virginia (Mr. BYRD) tomorrow, the distinguished Senator from New Mexico (Mr. MONTOYA) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD of West Virginia. Mr. President, I believe that an order has already been entered with respect to the transaction of routine morning business tomorrow.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD of West Virginia. And that such period is not to extend beyond 11 a.m. tomorrow.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD of West Virginia. I thank the distinguished Presiding Officer.

Mr. President, I suggest the absence of a quorum. I assume this will be the final quorum call of the day.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, unless the able assistant Republican leader or the distinguished manager of the bill has something to say at the moment, I will proceed with the program for tomorrow.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 a.m. After recognition of the two leaders, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: the junior Senator from West Virginia (Mr. BYRD) and the junior Senator from New Mexico (Mr. MONTOYA).

Following this, there will be a period for the transaction of routine morning business, with statements therein limited to 3 minutes, the period for the transaction of routine morning business not to extend beyond 11 a.m.

Beginning at 11 a.m., there will be 1 hour of controlled time for debate on the motion to invoke cloture on the conference report on the extension and revision of the draft.

At 12 o'clock noon, a mandatory live quorum call will occur in accordance with Standing Rule XXII. When a quorum has been established, an automatic rollcall vote will occur on the motion to invoke cloture. That rollcall vote will occur about 12:15 p.m.

If cloture is not invoked, presumably, another cloture motion will be filed immediately, with a rollcall vote thereon to occur on Thursday next.

If cloture is invoked on tomorrow, under the rule, the adoption of the conference report on H.R. 6531, the extension of the Military Selective Service Act, shall be the unfinished business, to the exclusion of all other business, until disposed of. Thereafter, under the rule, no Senator will be entitled to speak in all more than 1 hour on the question of adoption of the conference report or motions affecting the same.

The distinguished majority leader has indicated to me today that he expects the Senate to continue its deliberations with respect to the conference report until that matter is disposed of. Hence, the Senate will not operate on any dual track system until such disposition occurs.

ADJOURNMENT UNTIL 10 A.M.

Mr. BYRD of West Virginia. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10 a.m. tomorrow.

The motion was agreed to; and (at 3 o'clock and 54 minutes p.m.) the Senate adjourned until tomorrow, Tuesday, September 21, 1971, at 10 a.m.

NOMINATION

Executive nomination received by the Senate September 20, 1971:

TREASURER OF THE UNITED STATES

Romana Acosta Banuelos, of California, to be Treasurer of the United States.